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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 724

THE UNITED STATES OF AMERICA EX REL. ANTHONY VOLPE, PETITIONER,

vs.

S. D. SMITH, DISTRICT DIRECTOR OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 24, 1933

CERTIORARI GRANTED MARCH 27, 1933

(37,421)

(37,421)

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2 Pleas in the District Court of the United States for Plac
the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable James H. Wilkerson, District Judge of the United States for the Northern District of Illinois on Sixteenth day of June, in the year of our Lord one thousand nine hundred and thirty-one, being one of the days of the regular June Term of said Court, begun Monday, the First day of June, and of our Independence the 155th year.

Present:

Hon. James H. Wilkerson

H. C. W. Laubenheimer, U. S. Marshal.

Charles M. Bates, Clerk.

19. 3 IN THE DISTRICT COURT OF THE UNITED STATES

Northern District of Illinois,

Eastern Division.

United States of America ex rel Anthony Volpe, vs. S. D. Smith, District Director of Immigration.	No. 39380.

Be It Remembered, that the above-entitled action was commenced by the filing of the following Petition for Writ of Habeas Corpus in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the 19th day of March, 1931.

4 * * (Caption) * *

To the Honorable Judges of Said Court:

Your petitioner, Anthony Volpe, respectfully represents to the court that he is now in the custody of one, S. D. Smith, Inspector in charge of immigration at Chicago, Illinois, and is now unlawfully held and restrained of his liberty by the said S. D. Smith in violation of the laws of the United States and the Constitution thereof.

Your petitioner further alleges that he is so detained and restrained of his liberty by the said S. D. Smith under and by virtue of the pretended claim and authority of a so-called warrant of deportation dated the 25th day of February, 1931, and purporting to be issued by one, W. N. Smelser, alleged to be an Assistant to the Secretary of Labor (a copy of which warrant is attached hereto and made a part hereof, as Exhibit "A").

Your petitioner further respectfully shows the court that the said warrant orders the deportation of your petitioner to Italy upon the following findings or charges, to-wit:

(a) that he entered by means of false and misleading statements, thereby entering without inspection;

(b) and that he has been convicted of a felony or other

crime or misdemeanor involving moral turpitude, prior
5 to entry into the United States, to-wit: violation of Sections 37, 148, 150, 151 and 219 of the United States Criminal Code.

Your petitioner alleges that said warrant has been issued as the result of a certain hearing upon said charges before the Immigration Department of the United States.

Your petitioner states that he does not have in his possession a transcript of the evidence and proceedings on which said warrant of deportation is based and prays that a full and correct transcript of such evidence and proceedings may be ordered attached to respondent's return herein.

Your petitioner respectfully represents that said alleged warrant of deportation is void and issued without authority of law, for the following, among other reasons:

1. That your petitioner is lawfully entitled to be and remain in the United States.

2. That the said alleged warrant does not set forth any cause sufficient in law to authorize the deportation of your petitioner from the United States.

3. That the charges and findings in said warrant are uncertain, indefinite, and insufficient to authorize the deportation of your petitioner from the United States.

4. That the charges and findings in said warrant are not sustained by any evidence at said hearing.

5. That the said warrant is issued by a person without authority under the law to do so.

6. That your petitioner did not enter the United States by false and misleading statements or either of them and
6 did not thereby enter without inspection and that the evidence at said hearing proves that your petitioner did not enter the United States by false and misleading statements or either of them, and did not thereby enter without inspection.

7. That the charge or finding that you petitioner entered the United States by false and misleading statements thereby entering without inspection, is uncertain, indefinite and insufficient in law in that it fails to state, describe or identify the alleged false and misleading statements and fails to state when and where petitioner so entered the United States.

8. That the charge or finding that your petitioner has been convicted of a felony or other crime or misdemeanor involving moral turpitude prior to entry into the United States, to-wit: violation of Sections 37, 148, 150, 151 and 219 of the United States Criminal Code, is uncertain, indefinite and in-

sufficient in law in that it fails to specify whether the conviction was of a felony or of another crime or of a misdemeanor and fails to identify the offense of which the conviction was had and fails to state when and where the conviction occurred and when and where the alleged offense was committed and when and where the alleged entry into the United States occurred.

9. That the criminal offenses and conviction mentioned in said warrant were not of a crime involving moral turpitude, as the evidence taken at said hearing proves.

10. That the evidence at said hearing proves that the said conviction and offenses mentioned in said warrant oc-
7 curred in the United States of America in the year 1925; that your petitioner lawfully entered the United States originally in 1906; that your petitioner lived continuously in the United States from said entry in 1906 until June 1928, when he left for a brief visit to Cuba, and again re-entered the United States in 1928 after an absence of two or three days in Cuba, and that the laws of the United States do not authorize deportation of your petitioner because of conviction of a crime in the United States more than five years after such original entry, although prior to such second entry.

11. That your petitioner was not accorded a full and fair hearing before the Immigration Department, in that

(a) the prosecution introduced in evidence a document entitled Certificate of Admission purporting to relate to the entry of your petitioner into the United States in 1928, which said document was and is incompetent, irrelevant, and immaterial as an unauthenticated hearsay statement in writing, made several years after the events to which it refers;

(b) the Immigration Inspector presiding at the hearing erroneously rejected evidence offered by your petitioner to prove the circumstances which led to petitioner's plea of guilty in the criminal case in order to show that petitioner was in fact innocent of said crimes and also to tend to identify the count under which he was convicted (sentenced) and also to tend to show that he was not convicted of a crime of moral turpitude;

(c) the Immigration Inspector presiding at the hearing erroneously admitted other evidence of the prosecution which was incompetent, irrelevant, and immaterial and erroneously excluded other evidence of petitioner which was competent, relevant, and material.

8 12 That the warrant of deportation is issued in violation of the laws and Constitution of the United States

in attempting to punish your petitioner twice for a single offense by causing his deportation on account of conviction for a crime notwithstanding that defendant fully served and performed the sentence imposed by the court upon such conviction.

13. That the proceedings before the Immigration Department were conducted and the warrant of deportation against your petitioner was issued in violation of the due process clause of the Constitution of the United States.

14. That your petitioner was forced by the prosecution to testify as a witness against himself in said proceedings before said Immigration Department, in violation of the laws and Constitution of the United States.

15. That much of the evidence against your petitioner in said proceedings before said Immigration Department resulted from an unlawful search and seizure of the person and property of your petitioner by officers of the United States, in violation of the laws and Constitution of the United States.

16. That the alleged false and misleading statements charged in connection with petitioner's entry in 1928, were and are immaterial and their truth or falsity had no effect on petitioner's right to return to the United States on said occasion.

17. That your petitioner was lawfully entitled to re-
9 turn to the United States on said occasion in 1928, regardless of the truth or falsity of said alleged false and misleading statements.

18. That your petitioner was lawfully entitled to return to the United States on said occasion in 1928, without examination or inspection as to the subject matter of said alleged false and misleading statements and therefore did not enter by said alleged false and misleading statements.

19. That your petitioner was lawfully entitled to return to the United States on said occasion in 1928 because he had been lawfully admitted to the United States in 1906, had lawfully established a bona fide continuous residence in the United States during the period from 1906 to 1928 and, without relinquishing said residence had visited Cuba for a temporary period of less than six months, to-wit, three days and was returning therefrom and that his right to return to the United States existed without regard to the subject matter of said alleged false and misleading statements.

Your petitioner further shows that it is now the purpose and intent of the said S. D. Smith to cause the deportation of

your petitioner to Italy upon and by virtue of said alleged warrant of deportation, in violation of the laws and Constitution of the said United States.

Your petitioner therefore prays that the Court order that a writ of habeas corpus be issued in his behalf, directed to the said S. D. Smith or any officer having custody of your petitioner, to forthwith bring your petitioner before this honorable court and that said respondent or respondents may be required to show cause, if any there be, for your petitioner's detention, and that your petitioner may be discharged from said unlawful imprisonment and detention and said warrant of deportation be held and decreed by the court to be null and void.

ANTHONY VOLPE
Petitioner.

JOHN ELLIOTT BYRNE
MILES J. DEVINE
Attorneys for Petitioner.

State of Illinois } ss.
County of Cook. }

ANTHONY VOLPE, being on oath first duly sworn, deposes and says, that the above and foregoing petition for habeas corpus has been signed by him; that he is familiar with the contents thereof and that said petition is true in substance and in fact.

ANTHONY VOLPE

Subscribed and sworn to before me this 19th day of March 1931.

GRACE E. CONKEY
Notary Public.

(Seal)

11 EXHIBIT "A."

Warrant—Deportation of Alien
311/1227 United States of America
Department of Labor
Washington

No. 55716/761

To: District Director of Immigration, Chicago, Ill., Commissioner of Immigration, Ellis Island, N. Y. H. Or to any Officer or Employee of the United States Immigration Service.

Whereas, from proofs submitted to me Assistant to the Secretary, after due hearing before Immigrant Inspector D. E. Ellefson, held at Chicago, Ill., I have become satisfied that the alien Antonio or Anthony or Tony Volpe alias Mops Volpe alias Albert Lopez who landed at the port of Key West, Florida, ex Aeroplane "General Machado, NC-55. on the 24th day of June 1928, is subject to be returned to the country whence he came under section 19 of the immigration act of February 5, 1917, being subject to deportation under the provisions of a law of the United States, to-wit:

That he entered by means of false and misleading statements, thereby entering without inspection; and that he has been convicted of a felony or other crime or misdemeanor involving moral turpitude, prior to entry into the United States, to wit: violation of Sections 37, 148, 150, 151 and 219 of the United States Criminal Code.

I, W. N. Smelser, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Italy, the country whence he came, at the expense of the appropriation, "Expenses of Regulating Immigration, 1931", including the expenses of an attendant, if necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding appearance bond.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 25th day of February, 1931.

W. N. Smelser
Assistant to the Secretary of Labor.

Copied by FD/

12 And afterwards, to wit, on the 19th day of March, 1931 being one of the days of the regular March Term of said Court, in the record of proceedings thereof, in said entitled cause, before Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

13 * * (Caption) * *

ORDER.

On motion of Petitioner, Anthony Volpe, by his attorneys for the issuance of a writ of habeas, and the court having considered the petition of said petitioner and having heard arguments of counsel for petitioner and respondent and being fully advised in the premises It Is Ordered that a writ of habeas corpus as prayed for in said petition returnable on the 31st day of March 1931, and that said petitioner be released from custody upon his present appearance bond in the sum of Ten Thousand Dollars ($10,000.00) now on file in the Immigration Department of the United States, said bond by consent of said principal his sureties and the respondent duly given in open court by each of them to be continued in full force and effect as and for a recognizance in this court to insure the appearance of said petitioner at all proceedings in this court in the above entitled cause.

JAMES H. WILKERSON
Judge.

14 And, afterwards, to-wit: on the 31st day of March, 1931, the following order was entered:

15 * * (Caption) * *

Tuesday, March 31, A. D. 1931.

Present: Honorable James H. Wilkerson, District Judge.

On motion of the defendant's attorney it is

Ordered that the time within which the defendant is to file return be and the same is hereby extended to April 9th 1931 and it is

Ordered that the hearing on the petition and return of respondent thereto be and the same is hereby set for April 10th 1931.

16 And, afterwards, to-wit, on the 1st day of April, A. D. 1931, there was filed in the Clerk's office of said Court a certain Writ of Habeas Corpus, with Return of Marshal thereon endorsed, in words and figures, as follows, to wit: Filed 19

17 District Court of the United States of America,
Northern District of Illinois,
Eastern Division. } ss.

The United States of America—To S. D. Smith, Immigration Inspector in Chicago, Greeting:

You are hereby commanded to have the body of Anthony Volpe by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name and Anthony Volpe shall be called or charged, before our Judges of the District Court of the United States for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, on the 31st day of March, A. D. 1931, to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. James H. Wilkerson Judge of said Court, at Chicago, aforesaid, this 19th day of March, in the year of our Lord one thousand nine hundred and 31 and of our Independence the 155th.

CHARLES M. BATES
Clerk.

(Seal)

Served this writ on the within named S. D. Smith by reading the same to him and by leaving a copy thereof with him in person this 30th day of March A. D. 1931.

H. C. W. LAUBENHEIMER,
U. S. Marshal
by C. E. HALLETT
Deputy

Marshal's Fees	
1 service	$2.00
1 mile	.06
Total	$2.06

(Endorsed) * * (Caption) * * Writ of Habeas Corpus Returnable March 31, 1931 Charles M. Bates Clerk. Filed Apr 1, 1931 Charles M. Bates Clerk John Elliott Byrne Attorney for Petitioner.

18 And afterwards, to wit, on the 10th day of April, 1931 being one of the days of the regular April Term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

19 * * (Caption) * *

Friday, April 10, 1931.

Present: Honorable James H. Wilkerson, Judge of said Court.

It Is Ordered that this cause be and the same is hereby continued for further hearing to May 4, A. D. 1931, and that the time within which the respondent is to filed his return be and the same is hereby extended to May 4, A. D. 1931.

20 And afterwards, to wit, on the 4th day of May, A. D. 1931 came the Respondent by his attorney and filed in the Clerk's office of said Court a certain Return to Petition for Writ of Habeas Corpus in words and figures as follows, to wit:

21 * * (Caption) * *

RETURN TO PETITION FOR WRIT OF HABEAS CORPUS.

To: The Honorable Judges of the United States District Court, for the Northern District of Illinois, Eastern Division:

Now comes S. D. Smith, District Director of Immigration at Chicago, Illinois, by George E. Q. Johnson, United States Attorney for the Northern District of Illinois, Eastern Division thereof, and makes the following return to the petition for writ of habeas corpus issued herein requiring him to produce the body of Anthony Volpe before this Honorable Court, and makes return of the time, detention and restraint, and of his doings in the premises.

1. Your respondent denies that he is wrongfully and unlawfully restraining Anthony Volpe of his liberty, but alleges that he holds and detains the said Anthony Volpe by virtue of a warrant of deportation issued by W. N. Smelser, As-

sistant to the Secretary of Labor, on, to-wit, the 28th day of April, 1931.

2. Your respondent further states that the said Anthony Volpe, an alien and subject of Italy, was arrested by Immigration Inspector D. E. Ellefson, pursuant to a
22 warrant of arrest issued by W. N. Smelser, Assistant to the Secretary of Labor, on, to-wit, the 11th day of December, 1930, a copy of which said warrant of arrest is attached hereto, marked Exhibit "I", and made a part of this return.

3. Your respondent further states that thereafter the said Anthony Volpe was granted a hearing on said warrant of arrest before United States Immigration Inspector D. E. Ellefson at Chicago, Illinois, on, to-wit, January 3, 1931, and continued from day to day thereafter until concluded, a copy of the record of said hearing of that date and the subsequent dates is hereto attached, marked Exhibit "II", and made a part of this return.

4. Your respondent further states that in the course of said hearing the additional charge of having entered the United States at Key West, Florida, on the 24th day of June, 1928, without inspection, was preferred against the alien Anthony Volpe, and notice was given him of this additional charge not contained in the original warrant of arrest.

5. Your respondent denies that the allegation in the petition of habeas corpus which avers that no evidence was produced at the hearing to indicate that the alien, Anthony Volpe, entered the United States without inspection, is true, and further answering, your respondent avers that there was good and substantial evidence produced at the said hearing to support the charges found in the warrant of arrest and the
23 additional charge that the alien, Anthony Volpe, entered the United States without inspection on the 24th day of June, 1928, at Key West, Florida.

6. Your respondent denies that the alien, Anthony Volpe, was denied a fair hearing as alleged in his petition for a writ of habeas corpus, and further answering, your respondent avers that the alien, Anthony Volpe, was afforded a full and complete hearing, as shown by the record of said hearing, attached in this return as Exhibit "II", to which said hearing the alien, Anthony Volpe, was represented by counsel, given notice of the charges against him, heard the evidence against him, was given an opportunity to cross-examine the witnesses

produced against him, and was allowed the opportunity of introducing evidence on his behalf.

7. Your respondent further states that thereafter, upon recommendation of Immigration Inspector, D. E. Ellefson, a warrant of deportation was issued by W. N. Smelser, Assistant to the Secretary of Labor, on, to-wit, the 28th day of April, 1931, directing that the said alien, Anthony Volpe, be deported to Italy as having been found in the United States in violation of the Immigration Act of February 5, 1917, a copy of which said warrant of deportation is attached hereto, marked Exhibit "III", and made a part of this return.

8. Your respondent further states that the said alien, Anthony Volpe, was arrested and detained in accordance with the Immigration Laws of the United States and regulations made pursuant thereto, and that he was afforded a full,
24 complete and fair hearing on all charges preferred against him.

Wherefore, your respondent prays that the said writ of habeas corpus be discharged, and the said Anthony Volpe remanded to the custody of your respondent for deportation to Italy.

(Sgd) SHIRLEY D. SMITH
District Director of Immigration.
(Sgd) GEORGE E. Q. JOHNSON
United States Attorney.

State of Illinois, } ss.
County of Cook. }

SHIRLEY D. SMITH, being first duly sworn on his oath deposes and says that he is the District Director of Immigration at Chicago, Illinois, and authorized to act on and in behalf of the Secretary of Labor of the United States; that he has read the above and foregoing return and that the matters and things therein stated are true.

SHIRLEY D. SMITH
District Director of Immigration.

Subscribed and sworn to before me this 2nd day of May 1931.

NONA CONROY
(Seal) *Notary Public.*

25 EXHIBIT I.

Warrant—Arrest of Alien

UNITED STATES OF AMERICA

Department of Labor
Washington

No. 55716/671
To District Director of Immigration, Chicago, Ill.
Or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Antonio or Anthony or Tony Volpe alias Mops Volpe who landed at the port of Key West, Fla., on or about the 15th day of August, 1928, is subject to be taken into custody and returned to the country whence he came under section 19 of the immigration act of February 5, 1917, being subject to deportation under the provisions of a law of the United States, to wit: The immigration act approved May 26, 1924, in that he was not at the time of entry into the United States in possession of an unexpired immigration visa,

and, Whereas, from the evidence submitted to me, it appears that the said alien has been found in the United States in violation of the immigration act of February 5, 1917, for the following among other reasons:

That he has been convicted of, or admits the commission of a felony, or other crime or misdemeanor, involving moral turpitude, to-wit: possessing and passing counterfeit U. S. War Savings Stamps, prior to his entry into the United States.

I, W. N. Smelser Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to take into custody the said ailen and grant him a hearing to enable him to show cause why he should not be deported in conformity with law.

The expenses of detention hereunder, if necessary, are authorized, payable from the appropriation "Expenses of Regulating Immigration, 1931.' Pending further proceedings the alien may be released from custody under bond in the sum of $10,000.

For so doing, this shall be your sufficient warrant.

Witness my hand and seal this 11th day of December, 1930.

I do hereby certify this is an exact copy of the original.

(signed) W. N. SMESLER
Assistant to the Secretary of Labor.

PEJ HELEN C. ROLLESTON
HELEN C. ROLLESTON—*Steno.*

Government Exhibit "A"

26 EXHIBIT II.

U. S. DEPARTMENT OF LABOR
Immigration Service

Chicago, Illinois
File No. 311/1227
Report of Hearing
in the Case of
Antonio or Anthony or Tony
Volpe alias "Mops" Volpe
alias Albert Lopez

Under Department warrant No. 55716/671
Dated December 11, 1930
Hearing conducted by Immigrant Inspector
D. E. Ellefson
At Chicago, Illinois Date, January 3, 1931

Alien taken into custody at 1500 North Menard Avenue, Chicago, Illinois December 15, 1930 5:15 P. M., by Immigrant
(Place.) (Date and hour.)
Inspector D. E. Ellsfson and released on $10,000 bail bond.
(State if released on own recognizance or bail; or if detained Where.)

Testimony taken and transcribed by Helen C. Rolleston.

Said alien being able to speak and understand the English language satisfactorily, no interpreter was required.

Said alien was informed that the purpose of said hearing was to afford him an opportunity to show cause why he should not be deported to the country whence he came, said warrant of arrest being read and each and every allegation therein contained carefully explained to him. Said alien was offered an opportunity to inspect the warrant of arrest and the evidence upon which it was issued, which privilege was accepted. The alien being first duly sworn,
(If not sworn, state reason)
the following evidence was presented:

Q. What is your correct name?

A. Antonio Volpe.
Q. Have you ever been known by another name?
A. Well they called me "Mops" Volpe. At one time I was arrested for disorderly conduct and gave the name of Albert Lopez.
Q. You are advised that under these proceedings you have the right to be represented by counsel. Do you desire to obtain the services of a lawyer?
A. Yes, Mr. John Elliott Byrne, 1625 First Nat'l Bank Bldg. Tel: Central 6372 is here present and will represent me, also his associate Miles J. Devine, 320 Reaper Block. Tel: Central 1239, is also present, and is representing me.

27 Inspector to Attorneys:

Mr. Counsels, I now show you a Warrant for the Arrest of Antonio or Anthony or Tony Volpe alias "Mops" Volpe issued by W. N. Smelser, Assistant to the Secretary of Labor at Washington, D. C. December 11, 1930, which Warrant is hereby introduced in evidence, made a part of the hearing and marked Government Exhibit "A".

This Warrant was served upon Mr. Volpe by me at his home, 1500 North Menard Avenue, Chicago, Illinois, December 15, 1930, at 5:15 P. M.

Q. Do you accept service of this Warrant?

Attorney Byrne:

A. Yes, we do.

Inspector to Attorneys:

Q. Are you ready to proceed with the hearing?

Attorney Byrne:

A. We should like, first of all, to have Mrs. Volpe and the children testify, because the children are attending out of town schools and they must leave the city tomorrow, to be at school in time.

Inspector Ellefson:

All right, you may present your witnesses.

28 MRS. VOLPE called as witness and duly sworn:

Inspector to Witness:

Q. What is your name?
A. Sarah Volpe.
Q. Who is the gentleman here (indicating alien)?
A. That's my husband.

Q. Of what country are you a citizen?
A. United States.
Q. Where were you born?
A. Chicago, Illinois.
Q. When and where were you married to Mr. Volpe?
A. We was married at Chicago, Illinois, June 23, 1915.
Inspector to Attorneys:
Q. Mr. Counsels, do you wish to question your witness?
A. Yes.
Mr. Byrne to Witness:
Q. Mrs. Volpe, have you lived in Chicago ever since your marriage?
A. Yes sir.
Q. With Mr. Volpe your husband, of course?
A. Yes sir.
Q. How many children have you by that marriage?
A. Three.
Q. And the names of the children?
A. Is Joseph, Mary and Thomas.
Q. Will you give their ages please?
A. Mary and Joe are 15, Thomas is 13.
Q. Where were the children born?
A. Chicago, Illinois.
Q. Do you and Mr. Volpe own the home in which you are living?
A. Yes sir.
Q. Are the children attending school at present?
A. Yes sir.
Q. Have they ever done any work other than attending school?
A. No sir.
Q. What schools are they attending?
A. St. Bedes at Peru, Mary goes to Holy Family Academy, Beaverville, Illinois.
Q. Who conducts the schools?
A. The Benedictine Fathers out at Peru.
Q. And who conducts the other one?
A. Sisters of the Sacred Heart.
Q. They are first class schools, well-fitted to educate and take care of children?
A. Yes sir.
29 Q. Who pays for their tuition and boarding there?
A. Their father does.
Q. Of what country was your father a citizen?

A. My father was born here in Chicago, Illinois.
Q. Has Mr. Volpe used his name of Anthony Volpe all the time that you have been married to him?
A. All the time.
Q. Is his name in the telephone book?
A. Yes it is.
Q. How long has it been in the telephone book?
A. As long as we have a telephone, it think it is seven years.
Attorney: I think that is all Mr. Ellefson.
Witness Excused.
Inspector to Attorney:
Q. Have you any other witnesses you wish to present at this time?
A. Yes, the girl.

MARIE VOLPE called as witness and duly sworn:

Inspector to Witness:
Q. What is your name?
A. Marie Volpe.
Q. How old are you?
A. 15 years old.
Q. Where were you born?
A. Chicago, Illinois.
Q. Who is the man here (indicating alien)?
A. My daddy.
Inspector to Attorneys:
Q. Mr. Counsels, do you wish to question your witness?
A. Yes.
Attorney Byrne to Witness:
Q. And your mother is Mrs. Volpe sitting next to you there?
A. Yes sir.
Q. Are you attending school at the present time?
A. Yes sir.
Q. Where?
A. Holy Family Academy, Beaverville, Illinois.
Q. How long have you been going there?
A. Since September.
Q. Did you attend school before that?
A. I went to the public school, Ella Flagg Young in Chicago, Illinois.

Q. What grade did you complete at the Ella Flagg Young School?

A. Eighth grade.

Q. Who pays for your tuition and keeping at the school?

A. My daddy.

Q. You have never worked?

A. No.

Q. All you have done thus far is to attend school?

A. Yes sir.

Q. And you have attended regularly?

A. Yes sir.

Q. And you are now 15 and in what would be about the first year of high school?

A. Yes sir.

Q. Well you graduated from grade school and now in the first year academy?

A. Yes sir.

Attorney: That's all.

Witness excused.

Inspector to Attorneys:

Q. Have you any other witness you wish to present?

A. Yes.

JOSEPH VOLPE called as witness:

Inspector to Witness:

Q. What is your name?

A. Joseph Volpe.

Q. Who is this man?

A. My daddy.

Q. Where were you born?

A. Chicago, Illinois.

Q. When?

A. October 10, 1915.

Inspector to Attorneys:

Q. Mr. Counsels, do you wish to question your client?

A. Yes.

Attorney Byrne to Witness:

Q. Are you attending school now?

A. Yes sir.

Q. Where?

A. St. Bede's College, Peru, Illinois.

Q. And you are a twin of your sister Marie?
A. Yes sir.
Q. How long have you been attending school at Peru?
A. This is my first year, since September.
Q. And what school did you attend before that?
A. Ella Flagg Young.
Q. What grade did you finish there?
31 A. Eighth grade.
Q. Have you worked at all, other than attended school?
A. No sir.
Q. Your father has always supported you?
A. Yes sir.
Attorney: I guess that's all.
Inspector to Attorney:
Q. Any other witnesses?
A. Yes.
Inspector to Thomas Volpe Called as Witness:
Q. What is your name?
A. Thomas Volpe.
Q. How old are you?
A. I am 13.
Q. Born in Chicago?
A. Yes sir.
Q. Who is that man (indicating alien)?
A. That is my father.
Inspector to Attorneys:
Q. Mr. Counsels, do you wish to question your client?
A. Yes.
Attorney Byrne to Witness:
Q. Are you attending school at this time?
A. Yes sir.
Q. What school are you attending?
A. Ella Flagg Young.
Q. What grade are you in?
A. 7th grade.
Q. Have you never worked?
A. No sir.
Q. You never worked other than attending school?
A. No sir.
Q. And your father, or your daddy, has always supported you, and furnished a home for you?
A. Yes sir.
Attorney: I guess that's all.
Inspector to Attorneys:

Q. Have you any other witnesses you wish to present at this time?

A. That's all we have today.

32 By Attorney Byrne:

It appears that Mr. Volpe secured final naturalization papers some years ago, and I understand at the present time he has some other naturalization proceedings under way. I am not entirely familiar with them, in fact, very unfamiliar with them and I would like an opportunity to have a little more time to look into those factors as, of course needless to say to you, if he has any valid claim under the naturalization law, it would be very material in his case.

Inspector Ellefson to Attorney Byrne:

Q. How long a continuance do you desire?

Attorney Byrne: I would like to have ten days or two weeks, if I could. It would probably take some time to look the records up.

Inspector Ellefson to Attorney Byrne:

Q. If the hearing is continued to 9:00 A. M. January 17, 1931, will you then be prepared to proceed with the hearing?

A. Yes.

Attest:

D. E. Ellefson

D. E. Ellefson

Immigrant Inspector

Hearing continued to 9:00 A. M.—January 17, 1931.

33 311 1227

Continued Hearing
Conducted By
D. E. Ellefson—Immigrant Inspector,
at the
U. S. Immigration Office
1343 Transportation Building
608 S. Dearborn Street
Chicago, Illinois
January 17, 1931
10:15 A. M.

Present:

Antonio or Anthony or Tony Volpe, alias "Mops" Volpe, alien
John Elliott Byrne, Attorney
Miles J. Devine, Attorney
Assistant U. S. Attorney T. D. Healy

Thomas Calabres, Investigator for the law firm of Miles J. Devine
Helen C. Rolleston, Stenographer
D. E. Ellesfson, Inspector
Alien advised oath previously taken is still binding

34 Inspector to Alien:

Q. Are you the one and same Antonio or Anthony or Tony Volpe alias "Mops" Volpe who was given a hearing by me at this office January 3, 1931, and at that time your hearing was continued to 9:00 A. M. this date?

A. Yes.

Q. Of what country are you a citizen?

A. Well, I asked my father, he says I am a citizen of Italy.

Q. Is your father a citizen of Italy?

A. Yes sir.

Q. Is he lawfully within the United States?

A. Yes he is here lawfully, he has his passport.

Q. Have you any proof of your Italian citizenship?

A. The proof I have I asked my father and he said I was registered when I went to the Argentine Republic.

Q. That is he registered you as a citizen of Italy?

A. Yes sir.

Q. Where did that registration take place?

A. It took place at Casanova, province of Catanzaro, about 1904.

Q. When were you born?

A. I was born October 6, 1890.

Q. In what village or city?

A. I was born Argentine Republic, Santa Fe.

Q. Santa Fe is the village?

A. Yes sir, it is the name of the town I was born.

Q. Did you ever have an Italian passport?

A. To come here or to go out, what do you mean.

Q. Where you ever in possession of an Italian passport?

A. Well, I don't know how to answer that question?

Q. Any time?

A. Well, my mother was in possession. I came with my mother, brothers and sisters.

Q. Were you included in the passport of your mother when you originally came to the United States?

A. Yes, I was included, two sisters and my brother, and my mother.

Q. And your mother's name is what?

A. Maria Volpe.

Q. Is she living?

A. Yes sir.
Q. Where?
A. 1628 Gunderson Avenue, Berwyn, Illinois.
Q. Did your father or mother ever become a citizen of the United States?
A. Well, my father took out his first papers couple of times, and the reason he didn't fill in the full paper is because he couldn't fill out all the questions, and he gave the papers to an attorney once, John S. Reynolds and he told him to look into the papers and we have never heard from the attorney any more. We don't know whether he is dead or what.
Q. Did your father or mother ever perfect their citizenship in the United States?
A. Well they tried but they couldn't fill in all the answers to the questions, but my brothers all have.
Q. Then your father or mother have never been citizens of the United States?
A. No, but they applied for papers couple of times.
Q. Did you ever become a naturalized citizen of the United States?
A. Yes, sir, 1920, March 27.
Q. Are you still a citizen of the United States?
A. I have my first papers and I don't know, I applied for the second papers already, January 6.
Q. What happened to your United States citizen papers that you did receive?
A. Well, the Chief Examiner, Mr. Fred Schlotfeldt wrote me a letter and told me to bring in my papers which I did. When I gave him the papers I asked Mr. Schlotfeldt what he wanted with the papers for, so he says "I want to cancel these papers" and I said "Why do you want me to cancel these papers" I says "I got these papers from Judge Davis in good faith, I don't see why you want me to cancel these papers" so he says "Well, if you don't cancel these papers I will have to hold you for perjury" I said, "Well, why do you want to hold me for perjury" and he says "The best thing to cancel the papers because if you get a lawyer and go to court, I will have to get you in court for perjury" and I says "I don't know what I perjured" but I gave him the paper and says "I will do what you want and apply for papers again. I was never convicted for anything."
Inspector: The United States Naturalization file shows that one Antonio Volpe, petitioner #30179 was admitted to citizenship March 27, 1920, by Judge David, and on the fol-

lowing Saturday, April 3, 1920, the order admitting Antonio Volpe to citizenship was set aside and the certificate issued to him cancelled.

Q. Is that correct?

A. Well, I don't know that, I didn't know that they cancelled my papers.

Q. At that time, that petition and application for citizenship under which you were granted citizenship was continued for further hearing and it appears that you requested that your petition for naturalization be dismissed on March 28, 1924. Is that correct?

A. Well, that's the time that he asked me to sign the 36 papers dismissed.

Q. Then you asked that your petition be dismissed, at that time?

A. Well, I didn't know what else to do.

Q. What is your father's name?

A. Tommaso Volpe.

Q. Where was he born?

A. He was born in Casanova, Catanzaro province, Italy.

Q. And your father's present address?

A. 1628 Gunderson Avenue, Berwyn, Illinois.

Q. Did your father or mother ever become a citizen of any country other than Italy?

A. No sir.

Q. Did you ever naturalize as a citizen of any country other than the naturalization which took place in 1920 in the United States?

A. No sir.

Q. What is your complete home address?

A. 1500 N. Menard Avenue, Chicago, Illinois.

Q. Have you a telephone?

A. Yes sir, Merrimac 6884.

Q. What is your occupation?

A. My occupation when I work I am restaurant manager and when I work for myself, I am restaurant keeper.

Q. Have you been recently employed?

A. Not in the last six months, I have been sick, all my teeth removed and poison in my system.

Q. Are you married?

A. Yes sir.

Q. When were you married?

A. June 23, 1915.

Q. Where?

A. Chicago.

Q. By whom?
A. By a Judge, Judge Slusser.
Q. What is the name and present address of your wife?
A. My wife's name is Sarah Volpe, 1500 N. Menard Avenue, Chicago, Illinois.
Q. Is she the woman you married in 1915?
A. Yes sir.
Q. Is anyone dependent upon you for support?
A. Yes sir.
Q. Who?
A. My children, my wife, and my mother and father.
Q. What provisions will be made for your dependents if you are deported?
A. I don't know.
Q. Do you care to give the name and address of a relative abroad to whom you wish to go, if deported?
A. No sir.
37 Q. Do you own any property?
A. Yes sir.
Q. What does it consist of?
A. Six rooms upstairs and a room in the attic, seven room bungalow at 1500 N. Menard Avenue.
Q. Should you be ordered deported, would you be in position to make all necessary arrangements regarding your property, etc.?
A. Well I don't know if I could.
Q. Have you any bonds, securities?
A. No sir.
Q. Have you any money?
A. No sir.
Q. Have you ever been refused admission to the United States?
A. No sir.
Q. Have you ever been deported from the United States?
A. No sir.
Q. What language or languages do you read?
A. I read Portugese, Italian and English. You asked me if I had any money, I said "No." I have $100, $200.00, that is some money.

Inspector: I now show you a sworn statement consisting of three typewritten sheets of paper which purports to have been made by you to me in Judge Lyle's Chambers, Cook County Court House, December 8, 1930, and ask if you made that statement and if it is true and correct as it now appears.

(Statement shown to and read by alien)

A. Yes sir, I made that statement.

Q. Is that statement true and correct, or do you wish to make any additions or alterations?

A. Well, I made the alterations a couple of days later when I made that statement to you.

Inspector: That statement made by you to me on December 8, 1930, is introduced in evidence, made a part of the record of hearing and marked Exhibit "B."

Q. Do you understand that?

A. Yes.

Inspector: I hand you herewith, a sworn statement made by Antonio or Anthony or Tony Volpe, alias "Mops" Volpe, to me at the U. S. Immigration Office, 1343 Transportation Building, December 10, 1930, and ask if you made that statement?

(Statement shown to and read by alien)

A. Yes sir.

Q. Is that statement true and correct?

A. Yes sir.

Inspector: That statement consisting of nine typewritten sheets of paper, is hereby introduced in evidence, made a part of the hearing and marked Government Exhibit "C."

38 Q. Do you undertansd that?

A. Yes.

Q. When did you first enter the United States?

A. 1905, about.

Inspector: I now show you a Certificate of Admission of alien, dated New York, December 17, 1930, which shows that one Antonio Volpe, age 16, arrived on the Steamship Bulgaria, 3d class from Naples, age 16, single, farm laborer, citizen of Italy, race South Italian, who last resided at Decollotura, destined to Chicago, Illinois, to father Tommaso Volpe, 137 Ewing Street, Chicago, Illinois, was accompanied by his mother Maria, 44 years of age, brother Giuseppe, 14; brother Domenico, 2; and sister Fortunata, 21; was admitted at the port of New York March 31, 1906, and ask if that Certificate of Admission applies to you? (Certificate shown to alien)

A. Everything here is correct, only I might have made mistake.

Q. That record of admission applies to you?

A. Yes sir, only thing is the date, I am not sure.

Inspector: That Certificate of Admission is hereby introduced in evidence, made a part of the hearing, marked Government Exhibit "D."

Q. How many times have you been arrested?
A. About five or six different times.
Q. Were you ever convicted of anything?
A. Well, once, that thirty days I got.

Inspector: I now show you a certified copy of indictment #13339, United States District Court, Northern District of Illinois, Eastern Division, dated February 27, 1925, wherein one Antonio Volpe, otherwise known as "Mops" Volpe was a defendant, and I ask if you are the one and same Antonio Volpe or "Mops" Volpe mentioned therein as one of the defendants? (shown to alien)

A. Yes, I was.

Inspector: That indictment is hereby introduced in evidence, made a part of the hearing and marked Government Exhibit "E."

Q. Do you understand that?
A. Yes sir.

Inspector: I now show you a certified copy of judgment and commitment entered on indictment #13339 dated October 7, 1925, wherein it shows that Antonio Volpe alias "Mops" Volpe was sentenced to thirty days in the Lake County Jail, Waukegan, Illinois, by Judge Adam C. Cliffe, and ask if that jdugment and commitment apply to you? (shown to alien)

A. That's my name alright, but I didn't know that I was pleading guilty to them charges.
Q. Did you serve the time?
A. Thirty days, yes sir.

Inspector: That judgment and commitment #13339 dated October 7, 1925, is hereby introduced in evidence, made a part of the hearing, marked Government Exhibit "F."

Q. Do you understand that?
A. Yes sir.
39 Q. Is this the commitment under which you served thirty days?
A. So far as I know, I am.
Q. Have you ever made any other entries into the United States?
A. What do you mean if I ever went out of the United States, in what way.

Inspector: I mean, did you ever come into the United States any other time, other than the first time that you came, in 1906?

A. That's all.
Q. Were you ever absent from the United States?

A. Yes sir.
Q. For how long?
A. Three days.
Q. When?
A. 1928, I don't remember exactly the day or year.
Q. Where were you?
A. I was in Cuba.

Inspector: I now show you a form 505, Certificate of Admission of citizen dated Jacksonville, Florida, December 24, 1930, which shows that one Anthony Volpe was admitted at the port of Key West, Florida, from Havana, Cuba, June 24, 1928, as a citizen of the United States, giving the last permanent residence as 1500 Menard Avenue, Chicago, Illinois, showing that he arrived on the aeroplane, General Machado, initials NC 55, and that he was accompanied by Daniel A. Serritella, 1142 S. Michigan Blvd., and Anthony J. Prignano, 722 Bunker Street, Chicago; Jacob Guzik, 7240 Luella Avenue, Chicago; William V. Pacelli, 771 Dekoven Street, Chicago; Rocco Fischetti, 424 2d street, Brooklyn. This Certificate is signed by Thomas V. Kirk, District Director of Immigration, Jacksonville District, and ask if that Certificate of Admission applies to you?

A. Yes, it applies to me, but I never told him I was a citizen. I was asked questions and I told him I had first papers. They asked me if I was a citizen of the United States and I said I was first papers, married, yes, sir, own any property, yes sir.

Q. Did you tell the Inspector that you were naturalized in the Circuit Court of Cook County, Illinois, as a citizen of the United States?

A. Yes, I told him at one time in 1920 I was naturalized, yes. Then I told him I cancelled the papers and I had to take out new ones and I had the first papers, that's all.

Inspector: That Certificate of Admission is hereby introduced in evidence, made a part of the hearing, marked Government's Exhibit "G."

Q. Were you a citizen of the United States on June 24, 1928?

A. Well, I don't know what you may call it, I had the 40 first papers.

Inspector: Under the Immigration Act of February 5, 1917, I find it necessary to place the charge against you, that at the time of your entry at Key West, Florida, on June 24, 1928, you entered by false and misleading statements, thereby entering without inspection.

Q. Do you understand that?

A. Not exactly. I entered here without inspection.

Inspector: That you entered by false and misleading statements, thereby entering without inspection.

A. Well, I didn't make any false statements that I know of.

Inspector: You are now given an opportunity to show cause, if any there be, why you should not be deported on this additional charge, and you are given the right to be represented by counsel on this additional charge.

Q. Do you understand that?

A. Yes, sir.

Inspector: The charge contained in the Warrant for your Arrest, that you have been convicted of, or admit the commission of a felony, or other crime or misdemeanor, involving moral turpitude, to wit: possessing and passing counterfeit U. S. War Savings Stamps, prior to your entry into the United States does not appear to be complete, insofar as the legal offense named therein is concerned. However, under the Immigration Act of February 5, 1917, I find it necessary to formally place the following charge against you, that you have been convicted of a felony or other crime or misdemeanor involving moral turpitude, to wit: Violation of Section #148 of the Criminal Code, in that you possessed, made and forged Government obligations with intent to defraud; and violation of Section #150 of the Criminal Code, in that you possessed, plates for the purpose of printing and making government obligations, and that you had in possession counterfeit plates of a government obligation; and violation of Section 151 of the Criminal Code, in that you uttered, passed, published, possessed and sold a forged government obligation; and violation of Section #219 of the Criminal Code, in that you counterfeited postage stamps of the United States; and violation of Section #37 of the Criminal Code, in that you conspired to commit all of the aforementioned offenses against the Currency and Coinage and Postal Laws of the United States, prior to your entry into the United States.

Q. Do you understand that?

A. I understand very well.

Inspector: You are now given an opportunity to show cause, if any there be, why you should not be deported on the charge as just placed against you, and you also have the right to be represented by counsel on that charge also.

Q. Do you understand that?

A. Yes.

Q. Your attorneys present, will they represent you on
41 these additional charges?

A. Yes, they will.

Q. Have you resided in the United States continuously since you last entered the United States at Key West Florida, June 24, 1928?

A. Yes sir.

Q. At the time of your entry at Key West, Florida, June 24, 1928, were you in possession of an unexpired immigration visa issued to you by an American Consul?

A. Is that what they call a permit, to Cuba, called a permit?

Inspector: It is commonly called a passport.

A. No, I didn't have it.

Q. Were you in possession of any documents isused to you by an American Consul?

A. No sir.

Inspector: The warrant for your Arrest also charges that you entered the United States in violation of the Immigration Act approved May 26, 1924, in that you were not in possession of an unexpired immigration visa.

Q. Do you understand that?

A. Well. the basis of that is when you go to the American Consul and you want to go out of the country they give you identification. Is that what it means.

Inspector: Well an alien who is admitted to the United States for permanent residence, such as you were in 1906, may leave the United States and visit countries such as Canada, Mexico or Cuba, and providing they return to the United States within six months, they may be readmitted without any documents, providing they are otherwise admissible. In your particular case it appears you were a member of one of the excluded classes, in that you were convicted of a crime involving moral turpitude, prior to your last entry.

A. No, I didn't have any. I thought I didn't need any because when I got the thirty days the Judge said it would not hurt the citizenship.

Q. Were you assessed head tax at the time of your arrival in June, 1928?

A. Not at that time, no sir.

Q. Have you ever made any other entries into the United States other than those two already mentioned?

A. That's all, them two.

Q. How do you support your family?

A. When I work.

Q. Where did you last work?
A. 2132 S. Michigan Avenue, Chicago, Illinois, a restaurant, Little Florence Restaurant.
Q. Do you know Al Capone, the so called gang leader in this city?
A. I refuse to answer the question.
42 Q. Have you ever had any business dealings with him?
A. I refuse to answer that question.
Q. Are you a member of his so called "Gang"?
A. No sir.
Q. Referring to Government Exhibit "G", it states thereon that one Daniel A. Serritella accompanied you, is that correct?
A. Yes sir.
Q. Who is Mr. Serritella?
A. He is the City Sealer of Chicago, fellow I know for about 20 years.
Q. Also that one Antony J. Prignano accompanied you, is that correct?
A. Yes sir, he was alderman of the City of Chicago of the 20th Ward.
Q. Also shows that one Jacob Guzik accompanied you, is that correct?
A. Yes sir.
Q. What does Mr. Guzik do?
A. I don't know what he does.
Q. Is he the Jacob Guzik who was recently sentenced for income tax evasion?
A. The only thing I know by the picture in the newspaper.
Q. And William V. Pacelli is also shown on there, is that correct?
A. Yes sir, he is representative of the 17th Senatorial District of Chicago, Illinois.
Q. And also the name of Rocco Fischetti?
A. Yes sir.
Q. What is he?
A. I don't know.
Q. What have you to say in your own behalf as to why you should not be deported?
A. Well, I have this to say, that when I went to Cuba I didn't know I was violating a law because the Judge told me that if I pleaded guilty to the case for thirty days it would not hurt the citizenship, and if I thought it would hurt the citizenship, I would not go to Cuba for all the money that is in

Cuba, and I have lived here 25 years, honestly, and I can prove that, and I am willing to testify that I worked ever since I came to this country. I own my own property, I have three children here, two of them going to high school, one going to gramer school, I have my wife born in this country, I have my father who is 70 years old and my mother is 69 years old, I have brothers and sisters.

Q. Have you any further evidence or witnesses you wish to present?

A. Yes sir.

WITNESS CALLED AND DULY SWORN:

43 Inspector to Witness:

Q. What is your name?

A. A. J. Prignano.

Q. Of what country are you a citizen?

A. United States.

Q. By birth or naturalization?

A. By birth.

Q. What is your occupation?

A. Right now I am connected with the Inlaid Traffic Directory.

Q. What is your home address?

A. 722 Bunker Street.

Q. Are you the Mr. Prignano who accompanied Mr. Volpe to the United States from Cuba in 1928?

A. Yes sir.

Q. Are you aware of any of the circumstances surrounding his entry and admission to the United States, at that time?

A. Well, when we left Miami we were all questioned by the Immigration Officers, gave our names and addresses and stated whether we were citizens and Mr. Volpe was asked and he told, at that time, that he had his first papers, and they o. k'd and let us go over and on return to enter the United States we were delayed a day on his account and the immigration officers o. k'd us to leave Cuba the next day. We had our tickets and everything ready to leave and they delayed us one day on Mr. Volpe's account and they let us enter the United States again.

Q. What authorities delayed you, the Cuban or United States authorities?

A. Well, it was on the Cuban side, so I didn't inquire.

Inspector to Attorneys:

Q. Mr. Counsels, do you wish to question your witness?

A. Yes.

Attorney Byrne to Witness:

Q. Have you held public office Mr. Prignano?

A. I did

Q. What office have you held?

A. Alderman.

Q. When were you alderman?

A. 1927 and 1928.

Q. You were Alderman of the City of Chicago at the time of this Cuban trip?

A. Yes sir.

Q. How long did you say you stayed in Cuba?

A. About three days.

Q. Did you leave with Mr. Volpe from the United States?

44 A. Yes sir.

Q. And you returned with him?

A. Yes sir.

Q. Did you have a particular party of friends that made the trip together?

A. Alderman Pacelli and myself.

Q. Was Mr. Volpe one of your party?

A. I met Mr. Volpe down in Miami.

Q. Rocco Fischetti of Broklyn, do you know him?

A. I don't know that I remember that name, I met several people down there.

Q. Jacob Guzik, 7240 Luella Avenue, Chicago, Illinois?

A. I don't remember him.

Q. Do you remember him being in the trip?

A. I believe he was, I am not positive, there were several men.

Q. Daniel Serritella?

A. Yes.

Q. You returned by plane, as I understand?

A. Yes.

Q. About how many passengers were in the plane on the return trip?

A. I don't recall, may be ten, nine or ten.

Q. How long have you known Mr. Volpe?

A. About fifteen, eighteen years, maybe longer.

Q. Do you know his reputation with respect to honesty, integrity and obedience to law?

A. I have always known him to be very honest in any dealings that I know he was interested in. He was in business and I knew him when he ran an elevator, and I was running an elevator at the same time with him.

Q. Where was that?

A. He was working on Van Buren and Clinton. I don't recall the name of his concern and I was about a block away from him. He was earning about $7.00 a week that time.

Q. Do you know what his business was later?

A. I know he was in the restaurant business. I know he has always been hustling for a living, was a cigar salesman.

Q. But you know he was always industrious and took care of his family?

A. Yes sir, very much so.

Q. Do you know anything more about the delay in returning from Cuba?

A. No, only that we had our tickets ready to leave and we were told we couldn't leave on that day, and naturally one of the boys inquired, or the man in charge of the plane told us it was something relative to Mr. Volpe's citizenship. We thought then we would be delayed for quite some time, and the next day were told we could leave.

Q. Why were you held up on account of Volpe?

45 A. Because I had my ticket on the same plane. I didn't want to leave, knowing Volpe, I wanted to stay with him as a friend, because we were together in Cuba.

Q. Did you talk, yourself, with the officer who said there would be a delay?

A. No sir.

Q. Who was it that talked with him?

A. That I don't know. I think it was maybe the man in charge of the plane who told us.

Attorney Byrne: I guess that's all.

Attorney to witness:

Q. Just what did Mr. Volpe say with respect to his qualifications as to citizenship in the United States?

A. We were all asked our name and address and where we lived, where we were born and whether we were citizens or not, and I heard Mr. Volpe give his name, Chicago, Illinois, as his residence, born in Argentine and had his first papers, that is about all I can recall. At that time it only took a couple of minutes.

Q. You never heard him say, at any time, that he was ever naturalized?

A. No.

I guess that's all.

Witness excused.

Inspector:

Q. Have you any other witness.

A. Yes.

WITNESS CALLED AND DULY SWORN:

Inspector to Witness:

Q. What is your name?

A. Daniel A. Serritella.

Q. Of what country are you a citizen?

A. United States of America.

Q. By birth?

A. Yes sir.

Q. What is your occupation?

A. Senator of Illinois.

Q. Are you the City Sealer?

A. Yes.

Q. Where is your residence?

A. 2127 S. Prairie.

Q. Did you accompany Mr. Volpe upon his arrival in the United States at Key West, Florida, in June, 1928?

A. Yes sir.

Q. Do you know any of the circumstances surrounding his admission into the United States at that time?

A. No sir, the only thing I heard was that the In-
46 spector asked him if he was a citizen and Mr. Volpe said that he only had his first papers.

Inspector to Attorneys:

Q. Mr. Counsels, do you wish to question your witness?

Attorney Byrne: Yes, we would like to ask a few questions.

Attorney Byrne to Witness:

Q. How long have you known Mr. Volpe?

A. About 17 years.

Q. What is his reputation for honesty, integrity and obedience to the law?

A. Why he has been a working man all his life, as far as I know, has been working man, raised a family.

Q. Do you consider him honest?

A. Absolutely.

Q. Is he so considered by those who know him business and social life?

A. Absolutely.

Q. What business have you known Mr. Volpe to be engaged in at any time?

A. When I first met him when I was going to school, and he working in a factory as a elevator boy.

Q. What else did he work at after that Mr. Serritella?

A. I think he had a few other jobs after that, and I think he was in business at one time.

Q. What business was he in?
A. I think a saloon before prohibition.
Q. Did you ever hear of him in restaurant business?
A. Yes I know that he managed a restaurant at Halsted and Forquer.
Attorney Devine to Witness:
Q. Do you know about how many years he managed a restaurant there?
A. Oh about five or six years.
Q. Did you know, after that time, he was in a restaurant on West Madison and Woods?
A. Yes sir.
Q. Do you know how long he continued to run the restaurant there?
A. Two years.
Q. And after that time was he in a restaurant, managing it on the south side?
A. On 22d and Michigan.
Q. How long was he managing that restaurant there?
A. A little over a year.
Q. During the time that you knew him, you were well acquaitned with him, were you?
A. Yes sir.
Q. He lived, as I understand you, a few blocks from 47 you, on the West Side, what street was that?
A. Old Ewing Street, now called Gilpin Place.
Q. And during the 17 years you were acquainted with him, have you met him often?
A. Well, I met him very, very often in my old days, and lately I met him onct a week or onct a month.
Q. Did you know that during the last five months that he had all his teeth removed and poison had set in?
A. Yes, I know that.
Q. During the 17 years that you known him, has he, with the exception of the last five months, been continuously employed in some gainful and honorable pursuit?
A. Yes sir.
Q. How long were you over in Cuba?
A. About three days.
Q. Did you stay at any place, altogether there, the gentlemen who went with you?
A. At the Seville Biltmore.
Q. All registered there?
A. Yes.
Q. And Mr. Volpe was one of those who registered with you?

A. Yes sir.
Q. Did he go there with you and did he come back with you?
A. Yes sir.
Q. When you were leaving the United States, did you hear him, was he asked whether he was an American citizen or not and what was his reply?
A. Well, the first time he was asked whether he was from Key West to Cuba and his answer was that he had his first papers.
Q. When you got to Cuba, were you delayed in coming back?
A. We were delayed seven hours.
Q. What was the cause of that delay?
A. The cause of that delay was to investigate us.
Q. Who do you mean by they, officials?
A. Why Pacelli, Prignano, myself and Volpe.
Q. Who were investigating, I mean the Government?
A. Yes, the American government.
Q. And why the reason of that delay?
A. About Anthony Volpe
Q. What did he tell him in reference to his citizenship, if anything before that delay, what did he say?
A. That he had his first papers.
Q. And was that the reason of this delay, 5 or 7 hours?
A. I believe it was.
Q. And then after that, was the embargo lifted and allowed to go?
A. Yes sir.
Q. At that time, did he tell the officials of Cuba he was an American citizen or that he had his first papers, in both instances, coming and going?
A. In both instances, yes sir.
Witness excused.

48 WITNESS CALLED AND DULY SWORN:

Inspector to Witness:
Q. What is your name?
A. William V. Pacelli.
Q. Of what country are you a citizen?
A. U. S. A.
Q. By birth?
A. Yes.
Q. What is your occupation?

A. Alderman of the 20th Ward, Member of the City Council.

Q. Where do you reside?

A. 767 West Taylor Street.

Q. Were you with Mr. Volpe on the occasion of his return to the United States through the port of Key West, Florida, June 24, 1928?

A. I don't remember the date, but I was on the aeroplane.

Q. Do you know any of the circumstances surrounding his admission to the United States at that time?

A. Well, they asked us all if we were citizens and we said yes. I believe Mr. Volpe said he had his first papers. Then we got on the boat, they also asked him where he was born and he told them Argentine. I think we were delayed, I think one day, so I think the superintendent of the aeroplane company came into Prignano and my room and asked us who we know and I told him I was a member of the legislature at that time, and to identify ourselves, I went and wired Secretary of State Emmerson for identification, so I don't know what came about, whether Emmerson wired back or not. The next day they allowed us to get on the plane to come home.

Inspector to Attorneys:

Q. Mr. Counsels, do you wish to question your witness?

Attorney Devine to Witness:

Q. Was that reason caused by Mr. Volpe?

A. Yes sir.

Q. And did you hear him say to the officials there, of the Cuban Government that he had his first papers?

A. Yes

Q. Did he tell anyone, going or coming, that he was a citizen of the United States?

A. No, he just told him about first papers.

Q. And you know Mr. Volpe, how long?

A. 20 years or more.

49 Q. Did you live in the neighborhood where he was raised?

A. Yes sir.

Q. Did you attend school with him?

A. Not school, no sir.

Q. How far did you live away from him?

A. Three or four blocks.

Q. Did you know the general reputation of Tony Volpe for honesty and law abiding?

A. Yes sir.

Q. Was it good or bad?

A. Good.
Q. Do you know what business he was engaged in?
A. Well, when I used to hang around the same corners together, Volpe worked at Van Buren and Clinton Street, running an elevator and we boys used to go over sometimes and have lunch with him and come home with him. We were buddies at the time.
Q. You were the best of friends, altogether?
A. Yes.
Q. After he left running the elevator that you spoke of at Clinton and Van Buren, what did he do then?
A. Restaurant.
Q. Do you know anything about his having a restaurant?
A. Yes, Forquar and Halsted.
Q. For how many years?
A. Oh for a long time.
Q. Would you say three or four years or longer?
A. I don't know how long.
Q. Did he have a restaurant of his own on Madison Street after leaving Halsted Street?
A. I don't remember.
Q. How many years are you acquainted with him?
A. Oh I would say 20 years or more.
Q. Well, during the 20 years that you lived with him, you met him often?
A. Yes sir.
Q. During the past five months, you knew that he was sick because of his teeth and system poisoned?
A. Yes.
Q. And do you know he was laid up sick?
A. Yes sir.
Q. And prior to the past five months, did you know that he was legitimately and honestly engaged in business?
A. Yes sir.
Witness excused.
Inspector:
Q. Have you any other witnesses?
A. Yes sir.

50 WITNESS CALLED AND DULY SWORN:

Inspector to Witness:
Q. What is your name?
A. Dr. Septimo di Cosola.
Q. Of what country are you a citizen?

A. I was born here in America so that I am therefore a citizen of the United States.

Q. What is your occupation?

A. I am a Doctor of Dental Surgery.

Q. What is your address?

A. 947 West Taylor Street.

Q. That is your business address?

A. Yes sir, and I live above my office.

Q. Were you with Mr. Volpe when he returned to the United States from Cuba?

A. No sir.

Q. Do you know anything about Mr. Volpe's moral character?

A. Well, I have known Mr. Anthony Volpe for probably 15 years or more but more so in the last fifteen years because due to my age. He lived in my building above my office, from the time approximately 1918 to about 1924. It is the property of my late father, and I saw him very much because we used the same staircase.

Q. Do you know anything against his moral character?

A. No sir, I don't know. I know him as a family man and I now him as a patient, also his wife and his children.

Q. He always paid his bills?

A. Yes sir, paid his rent and bills.

Inspector to Attorney:

Q. Mr. Counsels do you wish to question your witness?

Attorney Devine: Yes.

Q. Doctor, during the time that he lived in the building, did you live in the same building?

A. No, I was not married then, I was practicing then.

Q. But during the time that he lived in your building you were all acquainted with him?

A. Yes sir.

Q. And since you became a dentist in 1919, you were called on different occasions to have his family treated, and you even treated him?

A. Yes sir.

Q. What business is your father in?

A. My father was a realty director and private banker.

Q. How long has your father been a banker?

A. He came here in '79.

Q. Is it the First Italian State Bank now?

A. He had a bank and it is liquidated.

Q. During the last number of years that you were ac-

quainted with Mr. Volpe, do you know what business he
51 was engaged in?

A. Well, as I recollect he had a business across the street where I was living, a sort of a restaurant and cigar store.

Q. How long was he there, do you know?

A. All the time he was single.

Q. And do you know what business he was in after that?

A. Managing a restaurant.

Q. Do you know how long?

A. Well, I can't really be precise.

Q. Was that restaurant on Halsted and Forquer?

A. I think it is the Belle Napoli.

Q. Do you know if he had a restaurant on Halsted and Wood Streets?

A. Well, I remember having it, but I never frequented it.

Q. Do you know that he was manager of a restaurant here on 22d Street?

A. Yes sir.

Q. Now, during the number of years you knew him, with the exception of the last five months, do you know he was legitimately engaged in a legitimate business?

A. Well, I really can't say, I haven't seen Tony for six or seven months.

Q. Well, I meant prior to that time?

A. Well, I knew nothing.

Q. Well, his reputation among people in Chicago, or that he was honest and law-abiding?

A. Yes sir, as far as I am concerned.

Inspector to Attorneys:

Q. Have you any further evidence to present?

Attorney Byrne: I would like to present the testimony of witnesses to the effect that Mr. Volpe was persuaded by his attorney and others to enter a plea of guilty in the case for reasons of convenience and economy, as he lacked the funds necessary to employ lawyers and make another defense at a second trial, and also testimony of witnesses to indicate that the evidence against Mr. Volpe was very slight, and that even, assuming the convicted in the case is guilty, nevertheless that his guilt, even if so admitted, was very slight, in other words, the evidence offered would go largely to the point of counteracting the tendency of the conviction to show bad character and Mr. Volpe's part, and might be useful in appealing to

the discretion of the Secretary, which is very wide under the Immigration Laws.

Inspector: I will have to deny your request Mr. Counsel, on the ground that I cannot properly receive and consider testimony of that nature. However, should you care to submit a brief or written argument in this case, you may,
52 of course, have the testimony of those witnesses in affidavit form, and attach those affidavits to your brief for review by the Secretary of Labor.

Inspector to Alien:

Q. Have you any other witnesses you wish to present?

A. No.

Q. Of what country is your wife a citizen?

A. United States.

Inspector to Attorneys:

Q. Mr. Counsels, do you wish to question your client?

Mr. Byrne: Yes, but I would like at this time to ask for a continuance until next Wednesday, January 21, 1931, at 1:00 P. M.

Attest:

D. E. Ellefson

D. E. Ellefson

Immigrant Inspector

Hearing Continued to 1:00 P. M. January 21, 1931.

53 311/1227

Continued Hearing
Conducted by
D. E. Ellefson—Immigrant Inspector
at the
U. S. Immigration Office
1343 Transportation Building
608 S. Dearborn Street
Chicago, Illinois
January 21, 1931
1:15 P. M.

Present:

Antonio or Anthony or Tony Volpe alias "Mops" Volpe, Alien

John Elliott Byrne, Attorney

Miles J. Devine, Attorney

Thomas Calabres, Investigator for the law firm of Miles J. Devine.

Helen C. Rolleston, Stenographer

D. E. Ellefson, Inspector

Alien Advised Oath Previously Taken Is Still Binding.

54 Inspector to Alien:

Q. Are you the one and same Antonio or Anthony or Tony Volpe alias "Mops" Volpe alias Albert Lopez, in whose case a hearing was originally begun on January 3, 1931, continued to 9:00 A. M. January 17, 1931, and thereafter continued to this date at 1:00 P. M.?

A. Yes.

Inspector to Attorneys:

Q. Mr. Counsels, do you wish to question your client?

A. Yes.

By Attorney Devine:

Inspector, in view of your ruling here, before we adjourned the other day, when the question was raised at that time about introducing evidence which might go in mitigation of the sentence of thirty days in the Federal Court, October 7, 1925, that we would like to introduce evidence on that point indicating that Tony Volpe was tried by a jury in the Federal Court before Judge Adam Cliffe, the said trial was continued on for eight or ten or twelve days, something like that, and that jury went out after being instructed by the court and remained out for seventy-two hours without arriving at a verdict; that the following Monday when Tony Volpe was asked to go on trial again, the Judge suggested to his lawyer then, Benjamin Epstein, that if his client Tony Volpe would enter a plea of guilty, that he would give him just thirty days of a sentence and that Tony Volpe, at that time said to his honor Judge Cliffe "Judge I want to be a citizen of the United States, I have got my first papers in, and if I enter a plea of guilty, it will bar me" and the Judge replied to Mr. Volpe and his lawyer "That won't affect your citizenship at all. If you desire to become a citizen and any question is raised about this matter, come to me and I will set you right, so far as this sentence is concerned"; and with that understanding, and the assurance of the court, Tony Volpe accepted and entered a plea of guilty and received a sentence of thirty days.

Inspector: In other words, the evidence you wish to present would, in a measure, assail the conviction.

Attorney Devine: No, it would explain, in a way, how he came to accept this sentence, but in deference to your previous ruling, we will not press the matter but simply make the

offer of the evidence that we would have presented, except for your ruling.

Inspector: I still hold that I cannot properly receive
55 and consider evidence surrounding the circumstances under which Mr. Volpe was convicted, but that I must be governed solely by the conviction.

Mr. Byrne to Alien:

Q. Mr. Volpe, were you living in Chicago at the time of the registration for military service during the late war?

A. Yes sir.

Q. Did you register for the military service at that time?

A. Yes sir.

Q. Were you assigned to any classification?

A. Well, class "A", a married man's class, 4th or 5th class.

Q. Did you claim exemption?

A. No sir.

Q. I wish you would set forth briefly, but completely, the different places where you have worked since you first came to Chicago and the approximate time you worked there?

A. To the best of my knowledge.

Attorney: Yes.

Alien: I worked for the National Biscuit Company "drop oven" for about three years. I worked for the Aldrich Bakery, running the elevator one year; I worked for Clinton Lithograph Company, running a bronze machine, one year; I worked for the Clinton Power Company about 2 and a half years running the elevator; I worked for my brother-in-law, James Pellegrino, one year before prohibition, bar tender; I had a billiard hall and a cigar store for four years at 923 Blue Island Avenue; I worked for Mr. Joseph Esposito as a restaurant manager for five years; I had my own restaurant at Wood and Madison Streets for about 2½ years; I worked as a restaurant manager at 4807 W. 22d Street; I worked as a restaurant manager at 2132 S. Michigan Avenue, The Little Florence Restaurant, that's all, that's up until 1930 in the Little Florence Restaurant about a year. The last six months I haven't worked on account of my system being poisoned from my teeth, and I had 17 teeth pulled out.

Q. Do you own the home in which you and your family live?

A. Yes sir.

Q. That is a six room bungalow?

A. Six rooms and one room upstairs in the attic.
Q. About what is the value of that house and lot?
A. About fifteen thousand.
Q. Is there any mortgage on it?
A. Yes sir.
Q. How much is the mortgage?
A. Five thousand.
Q. Who placed the mortgage on it?
A. The Service State Bank.
Q. Where is it located?
56 A. North Avenue and Central Avenue.
Q. Should you be deported to some foreign country, is there any way in which your wife and family could be supported?
A. I can't see how they can be supported.
Q. You said the other day, in response to the Inspector's question, that your father told you you were a citizen of Italy, is that right?
A. That's right.
Q. Have you ever relinquished your allegiance or supposed allegiance to Italy in favor of allegiance to the United States of America?
A. Yes sir, three or four different times.
Q. And you relinquished your supposed allegiance to Italy several times in connection with your making application for naturalization, did you not?
A. That's right.
Q. Now Mr. Volpe, the other day when the Inspector asked you some questions about Mr. Al Capone, you declined to answer some of the questions. After consultation with your attorneys Mr. Devine and myself, do you feel that you wish to answer the questions?
A. Yes sir.
Q. Do you know Mr. Al Capone?
A. Yes sir.
Q. Have you ever had any business dealings with Mr. Al Capone?
A. No business dealings, only that he used to come to the restaurant where I worked. He used to come in the restaurant to eat about once every ten days.
Q. Is that the way you got acquainted with him?
A. Yes sir, and that's the way I got acquainted with some other good citizens and public officials.

Q. You used to work at Mr. Joe Esposito's restaurant, did you not?

A. Yes sir.

Q. That was one of the well-known places where a great many prominent people used to come?

A. Yes sir.

Q. Is that where you got acquainted with Mr. Al Capone?

A. Yes sir.

Q. Now I want to again question you about business dealings or transactions with Mr. Al Capone, and ask whether you have ever had any business dealings with him, and by business dealings I mean where you paid him money or where he paid you money, or where you embarked in any transaction of a business nature, of course, leaving out of consideration that he bought his meals in the place where you worked?

A. No sir.

Q. Now you know Jacob Guzik?

A. Yes.

Q. Have you ever had any business dealings with him?

57 A. No sir, with the exception that he came to the restaurant where I worked to eat, with his family at times, wife, daughter and son.

Q. Coming back to your visit to Cuba. As I understand it, you were delayed when you desired to return, by some investigation on the part of the Immigration Officials. Is that correct?

A. Yes sir.

Q. Do you know what the cause of the delay was?

A. Well, from what I understand was because I said I had my first papers.

Q. And your understanding was, they were investigating your status on account of your statement that you only had your first papers?

A. That's correct.

Q. And after delay of some seven hours, you were allowed to return to the United States?

A. That's right.

Q. Now on this trip to Cuba, did you pay your own expenses?

A. Yes sir.

Q. That all came out of your own pocket?

A. Yes sir.

Q. And that was a pleasure trip that you did undertake on your own responsibility, upon you yourself?

A. Yes sir.
Q. You didn't transact any business?
A. No sir.
Q. And you did not intend to transact any business when you left Chicago?
A. No sir.
Q. In March, 1920, you were admitted to citizenship in the United States of America by order of Judge David sitting in Chicago, were you not?
A. Yes sir.
Q. And in connection with the proceedings resulting in that admission to citizenship, you had relinquished your allegiance to Italy and any other foreign country, had you not?
A. Yes sir.
Q. Relinquished your allegiance to any foreign country in favor of the United States of America?
A. Yes sir.
Q. And that order by Judge David was in full force and effect for five or six days was it not?
A. Yes sir.
Q. And then apparently was cancelled by Judge David?
A. That I didn't know.
Q. But you do know that it was in full force and effect for five or six days?
A. Yes sir.
Q. So that for five or six days you were a full and legally naturalized citizen of the United States of An rica?
58 A. Yes sir, I had the papers at home
Q. And had sworn allegiance to the United States of America in that instance as well as other instances?
A. Yes sir.
Q. And had relinquished your allegiance to Italy and any other foreign country in that proceeding as well as other proceedings?
A. That's true.
Q. Have you ever taken any oath of allegiance to any other foreign nation or power since March, 1920?
A. No sir.
Q. Have you ever taken any oath of allegiance to any other foreign power or nation since you arrived in the United States in 1905 or 1906?
A. No sir.
Attorney: I think that's all.

Inspector to Alien:

Q. Have you resided continuously in the United States since your original entry in 1906 with the exception of your absence during the year 1928?

A. Yes sir.

Q. Have you anything else to say in your own behalf as to why you should not be deported?

A. Yes sir. The reason for it is I am married, and I have three children. My father is 70 years old and my mother 69, they are both here lawfully for about 25 years. My three children are all citizens of the United States and so is my wife. Well, they won't be able to support themselves and they won't be able to get a good education, and I think I have been in this country about 24 or 25 years and I earned my honest living and I never violated the laws with the except of this here counterfeit case, and I didn't violate the law there, I took a plea of guilty on the advice of my attorney, with the understanding that I would only get thirty days and wouldn't cost me any more money for an attorney to go through with another trial, because I didn't have any more money and the court said it wouldn't hurt my citizenship. If I am deported it would mean separating my wife and children from me because they won't want to, under any conditions, leave this country because they were all born and raised here. That's about all I have.

Q. Have you any further evidence or witnesses you wish to present?

A. No.

Q. Are you satisfied with the treatment accorded you by this Service?

A. Yes sir.

59 Q. Have you thoroughly understood the nature of these proceedings?

A. Yes sir.

Q. Are you willing and able to furnish bond in the sum of $10,000?

A. Yes, it is furnished.

Inspector to Attorneys:

Q. Mr. Counsels, are you satisfied with the treatment accorded you and your client during the progress of this hearing.

Attorney Devine: Yes.

Q. Do you wish to submit a brief or written argument in this case?

Attorney Byrne: Yes, we would like to Mr. Inspector.

Inspector: You will be furnished with a transcript of the entire hearing.

Inspector to Alien:

You are advised under the Act of March 4, 1929, you will, if ordered deported and thereafter enter or attempt to enter the United States, be guilty of a felony and upon conviction thereof shall be liable to imprisonment for not more than two years, or a fine of not more than $1000.00, or by both such fine and imprisonment.

Q. Do you understand?

A. Yes.

Inspector to Attorneys:

Q. Mr. Counsels, do you think your client has been accorded a fair hearing?

Attorney Byrne: Yes, we think it has been entirely fair Mr. Inspector.

Description of Alien:

Height 5′ 7″; weight 165; eyes brown; hair dark brown; face oval; nose straight; mouth regular; distinctive marks—pock marked, no deformity or disease.

Exhibit's A, B, C, D, E, F, and G Attached.

Hearing closed subject to be reopened at the call of the Government for the introduction of additional evidence, if necessary.

Attest:

D. E. Ellefson
D. E. Ellefson
Immigrant Inspector.

B. 60 EXH. B.
311/1227

Sworn statement made by ANTHONY or TONY "MOPS" VOLPE to Immigrant Inspector D. E. Ellefson in Judge Lyle's Chambers, Cook County Court House on December 8, 1930, Chicago, Illinois.

Inspector to Alien:

Mr. Volpe you are hereby informed that I am a duly appointed Immigrant Inspector in the service of the U. S. Government, Bureau of Immigration, and am authorized to question an alien's right to enter, re-enter, pass through or reside in the United States. Any or all statements you may make should be made voluntarily, inasmuch as this statement will

be used as the basis for the issuing of a Warrant for your Arrest, should the facts as stated by you warrant same.

Alien Duly Sworn:

Q. What is your full and true name?

A. Anthony Volpe.

Q. Have you ever been known by any other name?

A. Nickname, "Mops" Volpe.

Q. Where were you born?

A. Santa Fe, Argentine.

Q. Of what descent are you?

A. South Italian.

Q. When and where did you first enter the United States?

A. About 1905, I can't recollect the month, at New York, on the Steamship Bulgaria.

Q. Was anyone with you? If so, whom?

A. My mother, Maria Volpe and my sister Fortuna Volpe, brother Guiseppe, brother Domonic.

Q. What is the date of your birth?

A. October 6, 1890.

Q. Of what country are you a citizen?

A. Really, I don't know how to answer that question, my five years were up in October, but I have filed for second papers.

Q. Then you are not a citizen of the United States?

A. I don't suppose I am.

Q. Of what country are you a citizen?

A. Of the Argentine Republic or Italy, we went to Italy when I was 14 years old. In 1905 we left Italy for this country.

Q. Of what country is your father a citizen?

A. I suppose a citizen of Italy, he was born in Italy.

Q. Where was he born?

A. He was born in the town they call Casanova, Catanzaro, Italy.

Q. What is your home address?

A. 1500 North Menard Avenue, tel =Merrimac 6884.

Q. Are you married?

A. Yes.

Q. When and where were you married?

61 A. June 26, 1915, in Chicago, I think it was by the Judge in the City Hall.

Q. Were you ever married before?

A. No.

Q. What was your wife's maiden name?

A. Sarah Johnstone.
Q. Where was she born?
A. In this country, Chicago.
Q. When were you first arrested?
A. In 1915, I think was the first arrest.
Q. Where?
A. I give myself up to the police.
Q. What for?
A. I killed two men that tried to kill me.
Q. Who were those two men that you killed?
A. Rocco Carboni alias Ellis John Hops, and the other fellow his name was "Butch", I don't know his right name.
Q. What disposition was made of that case?
A. Exonerated by the coroner's Jury.
Q. Where was the Coroner's Jury held?
A. In the county morgue, I can't remember other than it was in 1915, it was about a week after the shooting.
Q. Why did you kill them?
A. Because they shot me in the arm and the other fellow with a knife attacked me and cut my coat.
Q. When were you next arrested?
A. Well, I've been arrested four or five times for minor offenses.
Q. Were you ever sentenced?
A. I was arrested for possession and counterfeiting war savings stamps that were never found on my possession.
Q. What sentence did you get?
A. I was tried by a Jury and the Jury brought a disagreement verdict. Then and before I was asked by the Government if I would plead guilty they would give me sixty days, I couldn't see myself fit to plead guilty because I was not guilty, but when I see that my attorney misrepresent me, I pleaded guilty to sixty days and therefore the guilty people in the case were never tried to my knowledge.
Q. Which Judge were you before?
A. Judge Cliff.
Q. When were you sentenced?
A. About the year 1924 or 25, I can't remember.
Q. What did you plead guilty to?
A. For what I was charged, either counterfeiting or possessing war savings certificates.
Q. What other times have you been sentenced?
A. Never.

Q. What countries have you visited since you came here in 1905?

A. No country.

Q. Haven't you ever been to Canada or Mexico for a vacation?

A. No sir, I haven't been any place.

Q. What is your occupation?

62 A. When I work I am a restaurant manager, and when I work for myself I'm a restaurant keeper.

Q. Do you belong to the Capone Gang?

A. No sir, don't belong to no gang. If I did, I'd probably been dead by this time.

Q. Are you in sympathy with any of the gangs?

A. I don't favor no gangs.

Q. Where do your parents live?

A. 1628 S. Gunderson Ave., Berwyn, Illinois.

Q. How did it come about that you killed those two fellows in 1915?

A. I had an argument with the fellow by the name of John Hops about four or five months before the shooting, and we had a fist fight for about fifteen or twenty minutes, then he went away and I went home. Later in the evening he was waiting for me down the street at my house and he called me, he said come down to me, I want to talk to you. I said I will if he took his hands out of his pocket. He did, then I went close to him and he took out a knife, and made four or five passes at me and cut my coat and vest, then I started to run and he come after me, so I pulled a gun and shot him. Then he went to the hospital for two or three months, and I sent word to him that I was willing to pay for his Doctor bill, but I didn't want any more trouble with him. He sent word that he would give me plenty trouble. Later after that, about three or four weeks I went to a saloon on Sangamon & Harrison, we had a glass of beer and a sandwich, in comes John Hops and the fellow "Butch", and John said "This mops let's get him" so John pulled out a gun and I wrestled with him for the gun and took his gun away. In the meantime the other fellow pulled out a knife, I took the gun away from John, after he first shot and hit me in the arm, the other fellow went after me with the knife and John picked up a stool and he came after me and I shot him, and killed him, the other fellow was coming with a knife, and I shot him too and killed him, then I went to the police and give myself up.

Q. Did you ever go to court on that matter?
A. Yes, I was exonerated before the Coroner's inquest. The police held me to the municipal court and the Municipal Court held me to the Grand Jury, then I was indicted and tried by Jury and acquitted by Judge Kavanaugh.
Attest:

(Sgd) D. E. ELLEFSON
(Sgd) D. E. ELLEFSON
Immigrant Inspector.

I have read the foregoing and within sworn statement made by me, numbered 1 to 11 inclusive, and certify that they are true and correct to the best of my knowledge and belief.
(signed) ANTHONY VOLPE

Witness to sig.
D. E. ELLEFSON, *I. I.*
Copies by T. J. Mead.

63 EXH. C.

311/1227

U. S. Immigration Office
1343 Transportation Building
Taken at 608 S. Dearborn Street
Chicago, Illinois
December 10, 1930.

Sworn statement made by Anthony or Antonio or Tony Volpe alias "Mops" Volpe to Immigrant Inspector D. E. Ellefson.
Present:

D. E. Ellefson, Inspector
Anthony or Antonio or Tony alias "Mops Volpe," Alien
Helen C. Rolleston, Stenographer

Inspector: Mr. Volpe you are advised I am a duly appointed Immigrant Inspector and I desire to have you make a sworn statement regarding your right to be and remain in the United States. Any statement that you may make should be made voluntarily, inasmuch as same can be used against you should the United States Government deem such action advisable or necessary.
Q. Do you understand that?
A. Yes, I understand that.
Q. Are you willing to make a sworn statement to me under those conditions?

A. Yes sir.

By Inspector:

In the testimony you are about to give regarding your right to be and remain in the United States, do you solemnly swear to tell the truth, the whole truth and nothing but the truth, So help you God?

A. So help me God, yes sir.

Inspector:

Q. You are the one and same Mr. Volpe who made a sworn statement to me in Judge Lyle's Chambers in the Cook County Court House on December 8, 1930, are you not?

A. Yes sir.

Q. At that time, Mr. Volpe, I asked you to sign the sworn statement which you made to me, and you signed it, didn't you?

A. Yes sir.

Q. At that time, you claimed that you had never visited any country, and I informed you that should you recollect, at a later date that you had, in fact, been absent from the United States, that I would appreciate it if you could come into the office and correct your former statement, is that right?

A. That's right.

Inspector's Note: Mr. Volpe appeared at the office, 64 this date, voluntarily, in response to my request.

Q. Have you ever been absent from the United States since you arrived here in 1905?

A. Yes sir.

Q. When did you leave the United States?

A. Well, I couldn't say exactly the date, it was about two years ago.

Q. What month?

A. I couldn't remember that.

Q. Was it before or after the fourth of July?

A. That I couldn't answer, but with a little time I could bring the information, maybe the fellows I went with could recall.

Q. With whom did you go?

A. I went there with Dan Serritella.

Q. Is he the City Sealer?

A. Yes, he is the City Sealer of the City of Chicago.

Q. Anyone else?

A. An Alderman, Albert Prignano.

Q. Anyone else?

A. Representative William Pacelli.
Q. Is he State Representative?
A. State representative.
Q. Was there anyone else with you?
A. There was two more fellows but I just can't think who they were.
Q. Where did you go?
A. We went to the Seville-Biltmore Hotel.
Q. Where?
A. In Cuba.
Q. Is that in Havana?
A. Yes, Havana, Cuba.
Q. How did you go to Cuba?
A. By boat.
Q. What boat did you go on?
A. We took the boat at Key West, Florida.
Q. On what boat did you travel?
A. That I don't know.
Q. Was it a regular passenger boat?
A. Yes, 4 and a half hours it took us.
Q. How long were you in Cuba?
A. About four days.
Q. Were you registered at the Seville-Biltmore Hotel?
A. Yes sir.
Q. Under what name?
A. Under my right name, and address, I went there under my right name and address.
Q. What did you do while you were in Cuba?
A. We visited like at a cemetery where they have people they don't put in coffins, and we saw there bones, and went to see a couple Jai-Alai games and I went to the Tropical
65 Gardens where they have like a picnic, they advertise their beer and give away beer on Sunday.
Q. Was that on a Sunday?
A. I am pretty sure we went to the Tropical Garden and they only open on Sunday, and they give beer, etc.
Q. Were these other gentlemen with you?
A. Yes sir, there was six of us altogether, and I told you in the plane, the Consul, the Spanish Consul goes to Miami, Florida and goes back to Key West every day on the same plane. The name of the plane was the Pan American.
Q. Did you take that plane and come back to the States?
A. We took the plane and come back to Florida and we stopped at the Columbus Hotel.

Q. In Miami?
A. Yes sir.
Q. You boarded that plane in Havana, Cuba?
A. Yes.
Q. And where did you land in the United States?
A. We landed in some island, the Immigration Office was there. That is in Key West I think, I am not sure about that. The Immigration was there, the Government was there.
Q. Were you inspected by the Immigration Officer?
A. Yes I was.
Q. What did he ask you?
A. They ask me where I live and where I was going and I told them I was going to Chicago and I said I was going to Florida, Miami, and from there I was was to Chicago; and they asked me where I live and I said 1500 N. Menard Avenue and I said I lived there with my wife and three children and they asked me if I was an American citizen and I told them I had the papers one time but for some reason or other they were cancelled, but I have the first papers now, and they searched my grip and just found a lot of toys for the children and a box of cigars.
Q. Did the Inspector ask you your name?
A. Yes sir.
Q. Did you tell him your name was Anthony Volpe?
A. Yes sir, I told him my name was Anthony Volpe and I lived at 1500 N. Menard Avenue, Chicago, and I showed him my card from the boat.
Q. Did those other gentlemen go over to Cuba on the boat with you?
A. Yes sir, we went there altogether and came back together the same time.
Q. Did you come back to the United States the same day that you went to Cuba?
A. No, I was in Cuba about four days.
Q. Then you must have gone to Cuba Tuesday or Wednesday and stayed until the following Sunday, is that right?
A. Yes, about right.
Q. Were you in possession of any documents issued by an American Consul when you returned to the United States at Key West, Florida? 66
A. No.
Q. Were you assessed a head tax?
A. The only thing that I was assessed was duty on a carton of cigarettes, I think it was ten cents.

Q. Did you go to the American Consul in Havana, Cuba, or elsewhere and attempt to obtain an immigration visa?

A. No, the only thing they did when we signed up for the plane, they investigated us in Havana. We were held up only a few hours, they wanted to send a telegram to Springfield to find out if the man was representative, I think they wrote to Governor Emmerson.

Q. Who did this writing?

A. The Pan-American took care of it I think, I am not sure that the immigration officers was up in the hotel after we signed up for the plane.

Q. What line did that airplane, the Pan-American belong to?

A. I don't know what line it belong.

Q. Was that the name of the ship?

A. That is the name of the company.

Q. But that was the name on the airplane?

A. I don't say it was the name of the plane, but it was the company.

Q. Was it an airplane or seaplane?

A. It was an airplane because I remember they kidded about it.

Q. How many motors?

A. Two motors.

Q. Do you know the name of the pilot?

A. I don't know.

Q. Do you know what month that was?

A. No I don't recollect, but I suppose if you went to the Company you could get the information.

Q. Was it in the year 1928?

A. Yes I am pretty sure it was.

Q. Was there anything special going on in Havana, at that time?

A. No, we were in Florida see, for a little vacation, and all at once we thought, this is getting lonesome, let's go to Cuba, and I said I couldn't go very long, I haven't much time, but they said it only takes four hours and we were coming back, but we saw the games and then I spoke the language, because the Portuguese language is almost the same as Cuban.

Q. Would you say it was in the month of June?

A. My information is that the Government won't have much trouble to find out because with the information you have. I tell you honest to God truth, I can't remember.

Q. It was in the summer time of 1928?
A. That's right.
Q. Where did you spend the fourth of July in 1928?
A. I think I spent it at home with the children, I am not sure.
Q. Was it about August then?
A. No, I couldn't say.
Q. Where did you spend Labor Day in 1928?
67 A. I don't remember.
Q. It must have been about August then, that you were in Cuba?
A. I couldn't say, I can't remember. I don't want to lie.
Q. Is that the only time you have been absent from the United States?
A. That's the only time.
Q. Of what country is your father a citizen?
A. Well, I will say that he was a citizen of Italy because he was born in Italy.
Q. And your father lives here on Gunderson Avenue, Berwyn, Ill.?
A. Yes sir, 1628 S. Gunderson Avenue, Berwyn, Illinois, my father, mother and brother.
Q. What is your father's name?
A. Thomas.
Q. Thomas Volpe?
A. Yes sir.
Q. Is it a fact, Mr. Volpe, that you have only been sentenced by a court once?
A. That's all, and I won't be there if I had got a fair trial. I wouldn't say that the judge didn't give me a fair trial, but I would say the attorney didn't properly represent me.
Q. What were you sentenced for?
A. Well, I am supposed my charge were possession and counterfeiting of Government War Savings Stamps, which I never had, and I never saw them.
Q. How much of a sentence did you receive?
A. Thirty days.
Q. To what institution?
A. To Waukegan, Illinois, it is the County Jail, I think, in Waukegan, Illinois.
Q. What were you sentenced to?
A. I don't know, it was either thirty or sixty days.
Q. Did you serve the full sentence?

A. Yes sir.
Q. By what Judge were you sentenced?
A. Judge Cliffe.
Q. In what court?
A. In the Federal Building, on Jackson & Dearborn.
Q. When were you sentenced?
A. In 1924 or 1925.
Q. Under what name?
A. Under the name Anthony Volpe, my right name.
Q. Did you ever go under an assumed name?
A. No, only by my nickname "Mops".
Q. Then your last entry into the United States was at Key West, Florida, in the summer of 1928?
A. Yes sir.
Q. Have you made any other entries into the United States other than the one made in 1905 and one in 1928 at Key West?
A. I have been no place outside of the United States since 1905 at all, but once in Cuba, in 1928, that was in Cuba, no place out of the United States. I have been in Florida, that is as far as I have been.
Q. Inasmuch as your father is a citizen of Italy, do you consider yourself also a citizen of Italy?
A. No, I wouldn't want to consider myself a citizen of Italy, I want to consider myself a citizen of the United States because my brothers are citizens.
Q. Under the Italian law, however, you are entitled to claim Italian citizenship, aren't you?
A. That I don't know.
Q. You were born in Santa Fe, Argentine?
A. I was born in the Argentine Republic, Santa Fe was the town.
Q. And you stayed there until you were how old?
A. I stayed there until I was 14 or 15 years.
Q. Then where did you go?
A. Then we went to Italy.
Q. Who went to Italy with you?
A. My father, mother and two brothers. I am consider myself.
Q. How long did you stay in Italy?
A. Oh say about nine or ten months.
Q. Where did you live in Italy?
A. Cassanova, Province Catanzaro.
Q. When did you come to the United States?

68

A. Yes sir.
Q. Who was with you?
A. My mother, my sister and two brothers.
Q. When did your father come to the United States?
A. He came I think six months before we did, but he came here with my brother, I think he still has his passport.
Q. And you came to the United States in June, 1905, the first time, is that right?
A. I don't recollect the month exactly, but I came in 1905.
Q. And that was on the steamship Bulgaria?
A. Yes sir.
Q. What other times have you been arrested?
A. I don't know. I have been arrested, you know, picked up, many times, like disorderly conduct and been discharged, maybe I was going home, officer stopped me, I was going home and the officer take me to the station.
Q. Were you ever convicted in a municipal or any other court for anything?
A. No sir.
Q. Were you ever fined for anything?
A. No sir.
Q. Is that the only time, for possession and counterfeiting War Savings Stamps?
A. Yes that's right, my word and my record will show.
Q. Are you out on bond now?
A. Yes, $10,000 Vagrancy Bond, it should be $500.00.
69 Q. On a warrant issued by Judge Lyle charging you with being a vagrant?
A. Yes sir.
Q. When do you come up for trial?
A. I don't know, the case has to be assigned by the Chief Justice, and my case was change of venue, and my lawyer will notify me when the case is set.
Q. The other day you couldn't recall the name of the person who married you, do you know now?
A. Yes, the name of the judge is Mazzini, the second name, as close as I recall it, Slusser.
Q. What was the date of your marriage?
A. June 26, 1915.
Q. Are you willing to sign this statement as soon as it is written up?
A. Yes sir.
Q. Your father is still a citizen of Italy, is he?
A. Well, my father took his papers here, and I don't

know, first and second I think he has the second too, but he didn't answer questions, he is an old man, when the judge asked him how many stars in the flag, and he was sent back, but my father has been pretty sick since that time and he just pushes along.

Q. But your father is a citizen of Italy?

A. I don't know.

Q. But he has the first papers?

A. Yes sir.

Q. But you take the citizenship of your father, don't you?

A. Well, I have a wife and children born here and I think I take the citizenship of the United States, if I can have it.

Q. But under the law, you could rightfully be considered a citizen of Italy, couldn't you?

A. I wouldn't want it.

Q. I will grant that you wouldn't want to be a citizen of Italy, but under the law you would be a citizen of Italy?

A. I don't know if my father is a citizen of Italy, but the Argentine Republic, but when he went to the Argentine, he might have become a citizen there.

Q. How long did he live in the Argentine Republic?

A. That I can't remember that question.

Q. Where were your other brothers born?

A. All the brothers were born in the Argentine Republic, sister was born in Italy.

Q. How old is your sister?

A. She is about 45.

Q. What is her name?

A. Fortunata Pellagrine.

Q. Where does she live?

A. Right now she is in operation.

Q. What is her address?

A. 4516 W. Van Buren Street, Chicago, Illinois.

Q. Where does your brother Dominik live?

70 A He lives with my father, 1628 S. Gunderson Street in Berwyn, Illinois.

Q. Where does your brother Guiseppe live?

A. He is dead.

Q. Have you any other brothers here in Chicago?

A. Yes, Phil.

Q. Where does he live?

A. He lives at, his address I can't think of it, it is on 48th Avenue, between 18th and 19th, Cicero. He lives there with his wife and child.

Q. Who does he work for?

A. He works in a cigar store or restaurant, I don't know exactly, what it is. He is a citizen of the United States, so is Dominik a citizen too.

Q. Is your father registered with the Italian Consulate over here?

A. I don't know, I couldn't say.

Q. How old is your father?

A. 69 or 70.

Q. Is your mother living?

A. Yes sir.

Q. With your father?

A. Yes sir, they live together, my father, mother and my kid brother at their address, 1628 Gunderson, Berwyn, Illinois.

Q. Would you be willing to sign the shorthand notes in this case if the stenographer certifies to the correctness of her notes?

A. Yes, I will sign the notes and I will sign the statement when it is written up, if it is what I stated.

I Certify that the above and within statements made to Inspector Ellefson, by me, this date, December 10, 1930, in the U. S. Immigration Office, 1343 Transportation Building, Chicago, Illinois, are true and correct to the best of my knowledge and belief.

(Signed) ANTHONY VOLPE
(Signature)

I certify that the above and within notes were taken by me December 10, 1930, in the U. S. Immigration Office, before Inspector D. E. Ellefson, the deponent, Mr. Anthony Volpe having stated them in the English language.

(Sgd) HELEN C. ROLLESTON
Steno.

Attest:

D. E. ELLEFSON
(Sgd) D. E. ELLEFSON
Immigrant Inspector.

Copies by T. J. Mead

71 GOVERNMENT EXHIBIT "D".

CERTIFICATE OF ADMISSION OF ALIEN

U. S. DEPARTMENT OF LABOR
Immigration Service

#99197/554
(#311/1227)
District Director of Immigration
Chicago, Ill.

Port of New York,
Date Dec. 17, 1930

I Hereby Certify that the following is a correct record and statement of facts relative to the admission to the United States of the alien named below:

(1) Manifest No., 63/17; Class, 3rd from Naples;
(2) S S., Bulgaria; Line, Hamb. Amer.;
(3) Port at which admitted, NYC; Date, 3/31/06;
(4) Name, Volpe, Antonio; Age, 16; Sex, m;
(5) Married, s; Occupation, Farm labor; Able to read, yes; Write, yes;
(6) Citizen of, Italy; Race, So. Italian;
(7) Place of birth, —
(8) Class of immigration, —
visa, ; No. ; Issued at ; Date. ;
(9) Last permanent residence, Decollotura;
(10) Name and complete address of nearest relative or friend in country whence alien came, —
(11) Destination, Chicago, Ill.; By whom passage paid, father; Money brought, —:
(12) Whether in U. S. before, No; When, ; Where, ;
(13) Whether going to relative or friend, ; Give name and complete address, Father; Tommazo Volpe, 137 Ewing Street, Chicago, Ill.
(14) Purpose of coming to U. S., —;
(15) Condition of health, good;
(16) Height, ; Complexion, ; Color of hair, ;
(17) Color of eyes, ; Identification marks, ;
(18) Examined by Inspector Alexander;
(19) Accompanied by Mother: Marie—44 yrs. Brother Giuseppe—14 yrs. Brother: Domenico 2 yrs. Sister: Fortunata 21 yrs.; How admitted, primary;

(20) Remarks:

(Signature) BYRON HULL
Assistant Commissioner of Immigration
New York District.
(Official title)

(Printed in right-hand margin) This Form Is Insufficient as a Basis for a Petition for Naturalization.

72 GOVERNMENT EXHIBIT "E".

IN THE DISTRICT COURT OF THE UNITED STATES OF AMERICA

For the Northern District of Illinois,

Eastern Division.

Of the February Term,
in the year 1925.

Northern District of Illinois, } ss.
Eastern Division; }

The grand jurors for the United States of America empaneled and sworn in the District Court of the United States for the Eastern Division of the Northern District of Illinois at the February Term of said court in the year 1925, and inquiring for said division and district, upon their oath present, that Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as Dominick Socca, Frank Surace, otherwise known as Cicci Surace, Eli Levy, Sam Borina, otherwise known as Sam Borini, otherwise known as Sam The Barber, Charles Leech, Olive Meyers, Joseph D. Pullia, Antonio Volpe, otherwise known as Mops Volpe, Elias Jabour, otherwise known as Eli The Turk, Joseph Giordano, Joseph Guerra, Jasper Caravino, otherwise known as Guspano Cherevino, and Enrico Bambara, otherwise known as Henry Bambara, hereinafter called defendants, each late of the City of Chicago, in the division and district aforesaid, on, to wit, July 1, 1922, at Chicago aforesaid, not under the direction of the Secretary of the Treasury of the United States, and not under the direction of any other proper officer of the United States, unlawfully, willfully, feloniously and knowingly did make and execute, to wit, one glass negative, in the likeness and similitude of plates designed for the printing of certain obligations of the United States, to wit, a United States two-cent postage stamp; which said plate, obligation

and security then and there on the fact thereof, was each of the following tenor, to wit:

73 U. S. Postage
(Picture of)
(Washington.)
2 Cents 2

74 against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

75 Second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, July 1, 1922, at Chicago aforesaid, in said division and district, not under the direction of the Secretary of the Treasury of the United States, and not under the direction of any other proper officer of the United States, unlawfully, willfully, feloniously and knowingly did make and execute a certain photo litho zinc plate in the likeness of a plate designated for the printing of certain obligations and securities of the United States, to wit, a United States two-cent postage stamp, as described in the first count hereof; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

76 Third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, July 1, 1922, did, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously have in their control, custody and possession, to wit, a photo litho zinc plate, made after, and in the similitude of, certain plates from which certain genuine obligations of the United States, to wit, United States two-cent postage stamps, as described in the first count hereof had been printed, with intent then and there on the part of said defendants to use said plate in counterfeiting said obligation of the United States; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

77 Fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, July 1, 1922, at Chicago aforesaid, did willfully, unlawfully, knowingly and feloniously with intent to defraud falesly make, forge and counterfeit certain, to wit, three United States two-cent postage stamps, which said obligations of the United States then and there were as more fully described and set forth in the first count of this indictment: against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

78 Fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did on, to wit, July 1, 1922, at Chicago aforesaid, in the division and district aforesaid, unlawfully, knowingly and feloniously keep in their possession, and did conceal certain, to wit, three falsely made, forged, counterfeited and altered obligations and other securities of the United States, to wit, United States two-cent postage stamps, which are more fully described and set forth in the first count of this indictment, with intent to defraud and intent to pass, utter, publish and sell the same; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

79 Sixth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, July 1, 1922, at Chicago aforesaid, wilfully, knowingly, unlawfully and feloniously have in their control, custody and possession, and without authority from the Secretary of the Treasury of the United States or any other proper officer, certain, to wit, three, obligations and securities made and executed in whole and in part after, and in the similitude of obligations and securities issued under the authority of the United States, with intent to

sell and otherwise use the same; which said obligations so in the control custody and possession of the defendants as aforesaid, were of the tenor described and set forth in the first count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

80 Seventh Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, July 1, 1924, at Chicago aforesaid, in said division and district, not under the direction of the Secretary of the Treasury of the United States, and not under the direction of any other proper officer of the United States, unlawfully, willfully, feloniously and knowingly did make and execute certain, to wit, twelve copper plates, in the likeness of a plate designated for the printing of certain obligations and securities of the United States, known as United States War Savings Certificate Stamps, which said plate, said obligations and said securities then and there on the face thereof, were each of the following tenor, to wit:

81 United States

War-Savings
Certificate
Stamp

Cost in Dollars During 1919	(Picture of Franklin)	Cost in Dollars During 1919
Jan. 4.12	Franklin	July 4.18
Feb. 4.13		Aug. 4.19
Mar. 4.14	When Affixed to A Certificate	Sept. 4.20

Apr. 4.15		Oct. 4.21
	5 Dollars	
May 4.16	Will Be Payable January 1, 1924	Nov. 4.22
June 4.17		Dec. 4.23

Series of 1919 Series of 1919

82 against the peace and dignity of the United States, and contrary to the form of the statutes of the same in such case made and provided.

83 Eighth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, May 21, 1924, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously have in their control, custody and possession, to wit, twelve, copper plates made after and in the similitude of certain plates from which certain genuine obligations of the United States, to wit, United States War Savings Certificate Stamps, of the series of 1919, as described in the seventh count hereof, had been printed, with intent then and there on the part of said defendants to use said plates in counterfeiting said obligations of the United States; against the peace and dignity of the United States, and contrary to the form of statute of the same in such case made and provided.

84 Ninth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants, mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, July 1, 1925, at Chicago aforesaid, not under the direction of the Secretary of the Treasury of the United States, and not under the direction of any other proper officer of the United States, unlawfully, willfully, feloniously and knowingly did make and execute, to wit, twelve glass negatives, in the likeness and similitude of plates designed for the printing of certain obligations of the United States, to wit, United States War Savings Certificate Stamps, series of 1919, which said obligations of the said

United States then and there were as described and set forth in the seventh count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

85 Tenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, May 31, 1924, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously, with intent to defraud, falsely make, forge and counterfeit certain, to wit, fourteen thousand, obligations and securities of the United States, which said obligations of the United States then and there were as is more fully described and set forth in the seventh count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

86 Eleventh Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, October 1, 1924, at Chicago aforesaid, in the division and district aforesaid, unlawfully, knowingly and feloniously keep in their possession, and did conceal, certain, to wit, sixty thousand, falsely made, forged, counterfeited and altered obligations and other securities of the United States, to wit, United States War Savings Certificate Stamps, series of 1919, which are more fully described and set forth in the seventh count of this indictment, with intent to defraud and intent to pass, publish, utter and sell the same; against the peace and dignity of he United States, and contrary to the form of the statute of the same in such case made and provided.

87 Twelfth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, June 1, 1924, at Chicago aforesaid, in the division and district aforesaid, un-

lawfully, knowingly and feloniously keep in their possession, and did conceal, certain, to wit, fourteen thousand, falsely made, forged, counterfeited and altered obligations and other securities of the United States, to wit, United States War Savings Certificate Stamps, series of 1919, which are more fully described and set forth in the seventh count of this indictment, with intent to defraud, and with intent to pass, publish, utter and sell the same; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

88 Thirteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, June 1, 1924, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously, and with intent to defraud, pass, utter, publish and sell, certain, to wit, fourteen thousand, falsely made, forged and counterfeited obligations and other securities of the United States, to wit, United States War Savings Certificate Stamps, series of 1919, which said obligations of the United States then and there were as is more fully described and set forth in the seventh count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

89 Fourteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on to wit, October 1, 1924, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously, and with intent to defraud, pass, utter, publish and sell, certain, to wit, sixty thousand, falsely made, forged and counterfeited obligations and other securities of the United States, to wit, United States War Savings Certificate Stamps, series of 1919, which said obligations of the United States then and there were as is more fully described and set forth in the seventh count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

90 Fifteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district did, on, to wit, June 1, 1924, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously have in their control, custody and possession, and without authority from the Secretary of the Treasury of the United States, or any other proper officer, certain, to wit, fourteen thousand, obligations and securities, made and executed in whole and in part after and in the similitude of obligations and securities issued under the authority of the United States, with intent to sell and otherwise use the same, which obligations so in the control, custody and possession of defendants as aforesaid, were of the tenor described and set forth in the seventh count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

91 Sixteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, October 1, 1924, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously have in their control, custody and possession, and without authority from the Secretary of the Treasury of the United States, or any other proper officer, certain, to wit, sixty thousand, obligations and securities, made and executed in whole and in part after and in the similitude of obligations and securities issued under the authority of the United States, with intent to sell and otherwise use the same, which obligations so in the control, custody and posession of defendants as aforesaid, were of the tenor described and set forth in the seventh count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

92 Seventeenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, August 15,

1924, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously, with intent to defraud, falsely make, forge and counterfeit certain, to wit, sixty thousand, obligations and securities of the United States, which said obligations of the United States then and there were as is more fully described and set forth in the seventh count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

93 Eighteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, June 1, 1923, at Chicago aforesaid, in said division and district, not under the direction of the Secretary of the Treasury of the United States, and not under the direction of any other proper officer of the United States, unlawfully, willfully, feloniously and knowingly did make and execute certain, to wit, one copper plate, in the likeness of a plate designated for the printing of certain obligations and securities of the United States, known as United States War Savings Certificate Stamps, as described and set forth in the seventh count hereof; against the peace and dignity of the United States, and contrary to the form of the statute of the same in each case made and provided.

94 Nineteenth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did on, to wit, June 1, 1923, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously have in their control, custody and possession, to wit, one, copper plate made after and in the similitude of a certain plate from which certain genuine obligations of the United States, to wit, United States War Savings Certificate Stamps of the series of 1919, as described in the seventh count hereof, had been printed, with intent then and there on the part of said defendants to use said plate in counterfeiting said obligations of the United States; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

95 Twentieth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, June 1, 1923, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously, with intent to defraud, falsely make, forge and counterfeit certain, to wit, two obligations and securities of the United States, which said obligations of the United States then and there were as is more fully described and set forth in the seventh count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

96 Twenty-first Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did, on, to wit, June 1, 1923, at Chicago aforesaid, in the division and district aforesaid, unlawfully, knowingly and feloniously keep in their possession, and did conceal certain, to wit, two, falsely made, forged, counterfeited and altered obligations and other securities of the United States, to wit, United States War Savings Certificate stamps, series of 1919, which are more fully described and set forth in the seventh count of this indictment, with intent to defraud, and intent to pass, publish, utter and sell the same; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and proivded.

97 Twenty-second Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, did on, to wit, July 1, 1922, at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously make and print certain, to wit, 200, postage stamps of the kind authorized and provided by the Post Office Department of the United States, as more fully described in the first count of this indictment, without special authority and direction of said department; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

98 Twenty-third Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, July 1, 1922, did at Chicago aforesaid, willfully, unlawfully, knowingly and feloniously forge and counterfeit certain, to wit, 200, United States two-cent postage stamps, as are more fully described and set forth in the first count of this indictment; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

99 Twenty-fourth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, April 28, 1922, at Chicago aforesaid, in the division and district aforesaid, did unlawfully, willfully, knowingly and feloniously conspire, combine, confederate and agree together, and with divers other persons to the said grand jurors unknown, to commit divers offenses against the said United States, that is to say, the offenses described and set forth in the first six and the twenty-second and twenty-third counts of this indictment, as in those various counts described and set forth.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants at the times and places hereinafter set forth did and performed certain overt acts in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, to wit:

Overt Acts.

1. On, to wit, April 28, 1922, at Chicago, in the division and district aforesaid, the defendants Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as Dominick Socca, and Charles Leech met in Verdi's Restaurant located at No. 610 South State Street, Chicago, Illinois, in the division and district aforesaid.

2. On, to wit, April 29, 1922, at Chicago aforesaid, the defendants Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as
100 Dominick Socca, met with Nora Emery and Tony Bambara, now deceased, in the Verdi Restaurant, located at

No. 610 South State Street, Chicago, Illinois, in the division and district aforesaid.

3. On, to wit, May 17, 1922, at Chicago, aforesaid, the defendants, Charles Leech, Dominick Sacca, otherwise known as Dominick Socca, Frank Surace, otherwise known as Cicci Surace, Santo D. Jemalli, otherwise known as Sam Jamalli, met at No. 841 South Halsted Street, Chicago, Illinois, in the division and district aforesaid.

4. On, to wit, May 17, 1922, the defendants Charles Leech, Frank Surace, otherwise known as Cicci Surace, Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as Dominick Socca, Joseph Guerra, Jasper Caravino, otherwise known as Guspano Cherevino, and other persons whose names are to the said grand jurors unknown, met with one Nora Emery in the City of Benton Harbor, in the State of Michigan, at the home of said Joseph Guerra.

5. On, to wit, May 25, 1922, at Chicago aforesaid, the defendants, Charles Leech, Dominick Sacca, otherwise known as Dominick Socca, Frank Surace, otherwise known as Cicci Surace, and Santo D. Jemalli, otherwise known as Sam Jamalli, purchased certain equipment, to wit, a lenz, photo-litho zinc, rollers, ink, and divers chemicals and other articles (a more particular description of which is to the said grand jurors unknown).

6. On, to wit, July 20, 1922, at Chicago aforesaid, the defendants Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as Dominick Socca, Frank Surace, otherwise known as Cicci Surace, and Antonio Volpe, otherwise known as Mops Volpe, met at No. 841 South Halsted Street, Chicago, Illinois, in the division and district aforesaid.

7. On, to wit, July 20, 1922, at Chicago aforesaid, the defendants Charles Leech, Dominick Sacca, otherwise
101 known as Dominick Socca, Frank Surace, otherwise known as Cicci Surace, and Santo D. Jemalli, otherwise known as Sam Jamalli, made and executed certain plates, to wit, ten, photo-litho zinc plates, each containing, to wit, 200, etched United States two-cent postage stamps, as are more fully described and set forth in the first count of this indictment.

8. On, to wit, July 20, 1922, at Chicago aforesaid, the defendants Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as Dominick Socca, Frank Surace, otherwise known as Cicci Surace,

made and executed certain, to wit, 200, forged and counterfeit United States two-cent postage stamps.

9. On, to wit, August 1, 1922, at Chicago aforesaid, the defendant Eli Ltvy paid to one Tony Bambara, now deceased, the sum of, to wit, $2500.00 dollars.

10. On, to wit, September 6, 1922, at Chicago aforesaid, the defendants Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as Dominick Socca, Olive Meyers and Frank Surace, otherwise known as Cicci Surace, met with Tony Bambara, now deceased, at No. 2305 South Dearborn Street, Chicago, Illinois, in the division and district aforesaid.

11. On, to wit, November 1, 1923, at Chicago aforesaid, the defendant Henry Bambara, Sam Borina, otherwise known as Sam Borini, Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, and Frank Surace, otherwise known as Cicci Surace, met with one Tony Bambara, now deceased, in the basement of the New Paris Theatre, near the corner of Harrison and State Streets, Chicago, Illinois.

12. On, to wit, August 9, 1922, at Chicago aforesaid, the defendants Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Frank Surace, otherwise known as Cicci
102 Surace, and Dominick Sacca, otherwise known as Dominick Socca, and one Tony Bambara, now deceased, leased the premises known as the third floor in the building known and designated at No. 827 South State Street, Chicago, Illinois, in the division and district aforesaid.

13. On, to wit, September 20, 1922, at Chicago aforesaid, the said defendant shereinabove last mentioned, moved from No. 841 South Halsted Street, Chicago, Illinois, to No. 827 South State Street, Chicago, Illinois, in the division and district aforesaid, the following equipment, to wit: a lenz, lithographic rollern, metal, photographic chemicals, and divers other articles to the said grand jurors unknown.

14. On, to wit, November 30, 1922, at Chicago aforesaid, the defendants Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as Dominick Socca, Frank Surace, otherwise known as Cicci Surace, and Olive Meyers made and executed certain plates, to wit, 32, photo-litho zinc plates, each containing, to wit, 400, etched United States two-cent postage stamps, as are more fully described and set forth in the first count of this indictment.

15. On, to wit, May 25, 1923, at Chicago aforesaid, the

defendants Charles Leech, Dominick Sacca, otherwise known as Dominick Socca, Santo D. Jemalli, otherwise known as Sam Jamalli, Frank Surace, otherwise known as Cicci Surace, and Elias Jabour, otherwise known as Eli The Turk, met at No. 11 West Harrison Street, Chicago, Illinois, in the division and district aforesaid.

16. On, to wit, July 1, 1923, at Chicago aforesaid, 103 the defendants hereinabove named, made and executed, to wit, 200, counterfeit United States two-cent postage stamps.

Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

104 Twenty-fifth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, April 28, 1922, at Chicago aforesaid, in the division and district aforesaid, did unlawfully, willfully, knowingly and feloniously conspire, combine, confederate and agree together, and with divers other persons to the grand jurors unknown, to commit divers offenses against the said United States, that is to say, the offenses described and set forth in the seventh, eighth, ninth, tenth, eleventh, seventeenth, eighteenth, nineteenth, and twentieth counts of this indictment, as in those various counts described and set forth.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants at the times and places hereinafter set forth did and performed certain overt acts in pursuance of said unlawful conspiracy, combination, confederation and agreement and to effect the object of the same, to wit:

1. On, to wit, April 29, 1922, at Chicago aforesaid, the defendants Charles Leach, Santo D. Jamilli, otherwise known as Sam Jemalli, Dominick Sacca, otherwise known as Dominick Socca, met with Nora Emery and one Tony Bombara, now deceased, in the Verdi Restaurant, located at No. 610 South State Street, Chicago, Illinois, in the division and district aforesaid.

2. On, to wit, May 17, 1922, the defendants Charles Leech, Frank Surace, otherwise known as Ciccio Surace, Santo D. Jemalli, otherwise known as Sam Jamalli, Dominick Sacca,

otherwise known as Dominick Socca, Joseph Guerra, Jas-
105 per Caravino, otherwise known as Guspano Cherevino, and other persons whose names are to the said grand jurors unknown, met with Nora Emery and one Tony Bombara, now deceased, in the City of Benton Harbor, in the State of Michigan, at the home of said Joseph Guerra.

3. On, to wit, June 2, 1922, at Chicago aforesaid, the defendants Charles Leech, Dominick Sacca, otherwise known as Dominick Socca, Frank Surace, otherwise known as Ciccio Surace, and Santo D. Jemalli, otherwise known as Sam Jamilli, purchased certain equipment, to wit, a lenz, photo-litho zinc, rollers, ink, and divers chemicals and other articles (a more particular description of which is to the said grand jurors unknown).

4. On, to wit, August 9, 1922, at Chicago aforesaid, the defendant, Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Frank Surace, otherwise known as Ciccio Surace, and Dominick Sacca, otherwise known as Dominick Socca, leased the premises known as the third floor in the building known and designated as No. 827 South State Street, Chicago, in the division and district aforesaid.

5. On, to wit, September 20, 1922, at Chicago aforesaid, the said defendants hereinabove last mentioned, moved from No. 841 South Halsted Street, Chicago, Illinois, to No. 827 South State Street, Chicago, Illinois, in the division and district aforesaid, the following equipment, to wit: a lenz, lithographic rollers, metal, photographic chemicals, and divers other articles to the said grand jurors unknown.

6. On, to wit, January 30, 1923, at Chicago aforesaid, the defendants, Charles Leech, Dominick Sacca, otherwise known as Dominick Socca, Santo D. Jemalli, otherwise known as Sam Jamalli, and Frank Surace, otherwise known as Ciccio Surace, met with one Tony Bombara, now deceased, at No. 827 South State Street, Chicago, Illinois, in the division and district aforesaid.

106 7. On, to wit, February 5, 1923, at Chicago aforesaid, the defendant, Charles Leech, purchased at Chicago, Illinois, the following equipment, to wit: One Lenz, lumber, a wall board, condensing lenzes, and divers other articles to the said grand jurors unknown.

8. On, to wit, March 10, 1923, at Chicago aforesaid, the defendants hereinabove named, made and executed certain, to wit, eight, copper plates, which copper plates were similar

to the copper plates made and described in the seventh count of this indictment.

9. On, to wit, July 1, 1923, at Chicago aforesaid, the defendants named in the first count of this indictment, made and executed certain, to wit, 200, counterfeit war saving stamps of the series of, to wit, 1919, as are more fully described in the seventh count of this indictment.

10. On, to wit, June 30, 1923, at Chicago aforesaid, the defendants, Charles Leech, Olive Meyers, Sam Borina, otherwise known as Sam Borini, otherwise known as Sam, the barber, and Eli Levy met at No. 2305 South Dearborn Street, Chicago, Illinois, in the division and district aforesaid.

11. On, to wit, August 1, 1923, at Chicago aforesaid, the defendants, Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, and Joseph Giordano, met near the corner of State and Harrison Streets, Chicago, Illinois.

12. On, to wit, November 1, 1923, at Chicago aforesaid, the defendants, Enrico Bombara, otherwise known as Henry Bombara, Santo D. Jemalli, otherwise known as Sam Jamalli, Sam Borina, otherwise known as Sam Borini, otherwise known as Sam, the barber, Charles Leech and Frank Surace, otherwise known as Ciccio Suracco, met with one Tony Bombara, now deceased in the basement of the New Paris Theatre near State and Harrison Streets, Chicago, Illinois.

107 13. On, to wit, June 5, 1924, at Chicago aforesaid, the defendants, Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, and Joseph D. Pullia met at the home of the said defendant, Joseph D. Pullia, Chicago, Illinois.

14. On, to wit, July 20, 1922, at Chicago aforesaid, the defendants, Dominick Sacca, otherwise known as Dominick Socca, Charles Leech, Frank Surace, otherwise known as Ciccio Surace, Santo D. Jemalli, otherwise known as Sam Jamalli, and Antonio Volpe, otherwise known as Mops Volpe, met at No. 841 South Halsted Street, Chicago, Illinois; against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

108 Twenty-sixth Count.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants mentioned in the first count of this indictment, each late of the City of Chicago, in said division and district, on, to wit, April

28, 1922, at Chicago aforesaid, in the division and district aforesaid, did unlawfully, willfully, knowingly and feloniously conspire, combine, confederate and agree together, and with divers other persons to the said grond jurors unknown, to commit divers offenses against the said United States, that is to say, the offenses described and set forth in the first six, and the twelfth, thirteenth, fourteenth, fifteenth and sixteenth counts of this indictment, as in those various counts described and set forth.

And the grand jurors aforesaid, upon their oath aforesaid, do further present, that the said defendants at the times and places hereinafter set forth did and performed certain overt acts in pursuance of said unlawful conspiracy, combination, confederation and agreement, and to effect the object of the same, to wit:

Overt Acts.

1. On, to wit, May 17, 1922, at Chicago aforesaid, the defendants Charles Leech, Dominick Sacca, otherwise known as Dominick Socca, Franc Surace, otherwise known as Cicci Surace, Santo D. Jamalli, otherwise known as Sam Jamalli, met at No. 841 South Halsted Steet, Chicago, Illinois, in the division and district aforesaid.

2. On, to wit, May 17, 1922, the defendants Charles Leech, Frank Surace, otherwise known as Cicci Surace, Santo D. Jamalli, otherwise known as Sam Jamalli, Donimick Sacca, otherwise known as Dominick Socca, Joseph Guerra, Jas-
109 per Caravino, otherwise known as Guspano Cherevino, and other persons whose names are to the said grand jurors unknown, met with one Nora Emery in the city of Benton Harbor, in the State of Michigan, at the home of said Joseph Guerra.

3. On, to wit, August 1, 1922, at Chicago aforesaid, the defendant Eli Levy paid to one Tony Bambara, now deceased, the sum of, to wit, $2500.00.

4. On, to wit, June 1, 1924, at Chicago aforesaid, the defendants Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Frank Surace, otherwise known as as Cicci Surace, Olive Mayers, Sam Borina, otherwise known as Sam Borini, otherwise known as Sam The Barber, and Joseph D. Pullia, had in their control, custody and possession certain, to wit, 14,000 forged and counterfeited was ravings stamps of the series of 1919, as more fully described in the seventh count of this indctment.

5. On, to wit, September 9, 1924, at Chicago aforesaid, the defendants Charles Leech, Santo D. Jemalli, otherwise known as Sam Jamalli, Frank Surace, otherwise known as Cicci Surace, Sam Borina, otherwise known as Sam Borini, otherwise known as Sam The Barber, Olive Meyers and Antonio Volpe, otherwise known as Meps Volpe, had in their control, custody and possession certain, to wit, 70,000, forged and counterfeited war savings stamps of the series of 1919, as more fully described in the seventh count of this indictment.

6. On, to wit, October 15, 1924, the defendants Sam Borina, otherwise known as Sam Borini, otherwise known as Sam The Barber, and Olive Meyers met with one Tony Bambara, now deceased, at Wildwood, in the division and district aforesaid.

110 7. On, to wit, October 1, 1924, at Chicago aforesaid, the defendants Santo D. Jemalli, otherwise known as Sam Jamalli, Frank Surace, otherwise known as Cicci Surace, Dominick Sacca, otherwise known as Dominick Socca, Eli Levy, Sam Borina, otherwise known as Sam Borini, otherwise known as Sam The Barber, sold and uttered, to with, 20,000 United States War Savings Certificate Stamps, as more fully described in the seventh count of this indictment.

8. On, to wit, November 1, 1923, at Chicago aforesaid, the defenadnts Henry Bambara, Sam Borina, otherwise known as Sam Borini, otherwise known as Sam The Barber, Charles Leech, Santo D. Jamalli, otherwise known as Sam Jamalli, and Frank Surace, otherwise known as Cicci Surace, met with one Tony Bambara, now deceased, in the basement of the New Paris Theatre, near the corner of Harrison and State Streets, Chicago, Illinois.

9. On, to wit, May 25, 1925, at Chicago aforesaid, the defendants Charles Leech, Dominick Sacca, otherwise known as Dominick Socca, Santa D. Jemalli, otherwise known as Sam Jamalli, Frank Surace, otherwise known as Cicci Surace, and Elias Jabour, otherwise known as Eli The Turk, met at No. 11 West Harrison Street, Chicago, Illinois, in the devision and district aforesaid. Against the peace and dignity of the United States, and contrary to the form of the statute of the same in such case made and provided.

(Signed) EDWIN A. OLSON
United States Attorney.

111 Form No. 195

No. 13339 (Copy)

UNITED STATES DISTRICT COURT

Northern District of Illinois

Eastern Division

The United States of America
vs.
Santo. D. Jamalli, otherwise known as Sam Jamalli, Dominick Sacca, otherwise known as Dominick Socca, Frank Surace, otherwise known as Cicci Surace, Eli Levy, Sam Borina, otherwise known as Sam The Barber, Charles Leech, Olive Meyers, Joseph D. Pullia, Antonio Volpe, otherwise known as Mops Volpe, Elias Jabour, otherwise known as Eli The Turk, Joseph Giordano, Joseph Guerra, Jasper Caravino, otherwise known as Guspano Cherevino & Enrico Bambara, otherwise known as Henry Bambara.

Indictment.

Vio. Secs. 148, 150 & 151 C. C. (Offs. vs. The Currency, Coinage, Etc.) & Vio. Sec. 219 C. C. Postal Laws. (Offs vs. Postal Service) & Vio. Sec. 37, C. C. Conspriacy to Vio. same. (Having in Poss. & Control Counterfeited Obligations & Plates of the U. S. & Selling Same, & conspiracy so to do.)

A true bill,

WILLIAM Y. HENDRON
Foreman.

Filed in open Court this 27 day of February, A. D. 1925.

JOHN H. R. JAMAR
Clerk.

Bail, $.....

112 Certified Copy D. C. Form No. 30

United States of America }
Northern District of Illinois } ss.

I, Charles M. Bates, Clerk of the United States District Court in and for the Northern District of Illinois, do hereby certify that the annexed and foregoing is a true and full copy of the original Indictment filed the 27th day of February A. D. 1925—United States vs. Santo D. Jemalli et al. (Antonio Volpe, otherwise known as Mops Volpe)—Case #13339 now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 29th day of December, A. D. 1930.

(Sgd) CHARLES M. BATES
(Seal) *Clerk.*

114 GOVERNMENT EXHIBIT "F."

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

Wednesday, October 7th, A. D. 1925.

Present: Honorable Adam C. Cliffe, Judge.

United States
vs.
Santo D. Jamelli *et al.*, } No. 13339.

Comes the United States by the United States Attorney comes also the defendants in their own proper persons to have the sentence and judgment of the court pronounced upon them they having heretofore interposed pleas of guilty to the indictment filed herein against them and the defendants being asked by the court if they have anything to say they the sentence and judgment should not be pronounced.

It Is Therefore Considered and Ordered by the Court and is the sentence and judgment of the court upon the plea of

guilty so interposed herein as aforesaid that the defendant Dominick Sacco alias Dominick Socca and Frank Ceracs alias Cicci Serace be confined and imprisoned in the United States Penitentiary at Leavenworth Kansas for and during a period of One Year and One Day each and

It Is Ordered That execution of sentence be and the same is hereby stayed until October 14th, 1925 as to the defendant Dominick Sacco alias Dominick Socca and

It Is Ordered that the bonds heretofore filed herein by the said defendant is to remain in full force and effect and
115 that the defendant Eli Levi be confined and imprisoned in the McHenry County Jail at Woodstock, Illinois for and during a period of thirty days and

It Is Ordered that execution of sentence be and the same is hereby stayed until October 9th, 1925 and

It Is Ordered that the bond heretofore filed herein is to stand in full force and effect and that the defendant Charles Lach be confined and imprisoned in the Kane County Jail at Geneva, Illinois, for and during a period beginning as of November 1st, 1924 and ending October 7th 1925 and that the defendant Oliver Meyers be confined and imprisoned in the DuPage County Jail at Wheaton, Illinois for and during a period of Six Months

It Is Ordered That Execution be and the same is hereby stayed until November 9th, 1925 and

It Is Ordered that the bond heretofore filed herein by the said defendant is to remain in full force and effect and that the defendant Joseph D. Pulla be confined and imprisoned in the DeKalb County Jail at Sycamore, Illinois for and during a period of Sixty Days and the defendant is remanded to the custody of the United States Marshal whereupon the defendant Antonio Volpe alias Mepo Volpe by leave of court first had and obtained withdraws his plea of not guilty heretofore entered herein and the said defendant being now arraigned upon the indictment filed herein against him pleads guilty thereto and the said defendant being asked by the court if he has anything to say why the sentence and judgment of the court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not be pronounced

It Is Therefore Considered and Ordered by the Court and is the sentence and judgment of the court upon the plea
116 of guilty so interposed herein as aforesaid that the defendant Antonio Volpe alias Mepo Volpe be confined and

imprisoned in the Lake County Jail at Waukegan, Illinois, for and during a period of Thirty Days and

It Is Ordered That execution be and the same is hereby stayed until October 14th, 1925 and

It Is Ordered that the bond heretofore filed herein by the said defendant is to remain in full force and effect and that the defendant Elias Jabner be confined and imprisoned in the DeKalb County Jail at Sycamore, Illinois, for and during a period of Thirty Days and

It Is Ordered that execution be and the same is hereby stayed until October 14th, 1925

It Is Ordered that the bond heretofore filed herein by the said defendant is to remain in full force and effect and that the defendant Joseph Gardano be confined and imprisoned in the custody of the United States Marshal for and during a period of One Day, and the defendant is remanded to the custody of the United States Marshal and that the defendant Joseph Gerna be confined and imprisoned in the Kane County Jail at Geneva, Illinois for and during a period of Sixty Days and

It Is Ordered that execution be and the same is hereby stayed until October 14th, 1925 and

It Is Ordered that the bond heretofore filed herein by the said defendant is to remain in full force and effect

It Is Ordered that the defendants Jasper Casarini alias Guiseppe Cheranini be confined and imprisoned in the Du-Page County Jail at Wheaton, Illinois for and during a period of thirty days and

It Is Ordered that execution be and the same is hereby stayed until October 14th, 1925 and

It Is Ordered that the bond heretofore filed herein is to remain in full force and effect.

117 United States of America
Northern District of Illinois,
Eastern Division. } Set.

The President of the United States of America To the Marshal of the Northern District of Illinois, and to the Keeper of the Lake County Jail, at Waukegan, Illinois, Greeting:

Whereas Antonio Volpe, alias Mops Volpe appeared before the District Court of the United States of America for the Eastern Division of the Northern District of Illinois on the 30th day of March, A. D. 1925, to answer an indictment

filed therein against him for Violation Secs. 148, 150 & 151 C. C. (Offs. vs. The Currency coinage, etc) and Vio. Sec. 219 C. C. Postal Laws (Offs. vs Postal Service) and Vio. Sec. 37 C. C. Conspiracy to violate same (having in possession and control counterfeited obligations and plates of the U. S. selling same) And the said Antonio Volpe, alias etc. upon arraignment in due form of law, having plead guilty as charged in the said indictment, and having on October 7, 1925 been sentenced to imprisonment in the Lake County Jail, at Waukegan, Illinois for and during a period of Thirty Days.

Execution of sentence stayed until October 14, 1925.

Now, Therefore, you, the said Marshal, are hereby commanded that you convey the said Antonio Volpe alias etc. to the said Lake County Jail and you, the said Keeper of the said Lake County Jail are hereby commanded that you receive the said Antonio Volpe alias etc. into the said Lake County Jail, and him there safely keep until the expiration of the said sentence, or until he be discharged therefrom by due course of law.

Witness the Hon. Adam C. Cliffe, Judge of the District Court of the United States of America for the said District at Chicago aforesaid, this 7th day of October in the year of our Lord nineteen Hundred 25 and of the independence of the United States the 150th year.

CHARLES M. BATES,
Clerk.

(Seal)
Copied Ads

119 GOVERNMENT EXHIBIT "G"

Certificate of Admission of Citizen

U. S. Department of Labor
Immigration Service

No.3128/266
Chic. 311/1227

Port of Jacksonville, Florida
Date Dec. 24th, 1930

District Director
Immigration Service,
Chicago, Illinois

I Hereby Certify that the following is a correct record and statement of facts relative to the admission to the United States of the citizen named below:

(1) Manifest No., ; Class, ;

(2) Aeroplane General Machado NC 55; Line ;
(3) Port at which admitted, Key West, Fla. from Havana, Cuba; Date, June 24, 1928;
(4) Name, Anthony Volpe; Age, 36; Sex, male;
(5) Married, yes; Occupation, ; Able to read, ; Write, ;
(6) Citizen of, U. S. A. (Naturalized in Circuit Court of Cook County, Chicago, Ill.); Race, ;
(7) Place of birth, Argentine;
(8) Class of immigration visa, ; No. ; Issued at ; Date, ;
(9) Last permanent residence, 1500 Menard Ave., Chicago, Ill.;
(10) Name and complete address of nearest relative or friend in country whence alien came, ;
(11) Destination, ; By whom Money passage paid, brought, ;
(12) Whether in U. S. Before, ; When, ; Where, ;
(13) Whether going to relative or friend, ; Give name and complete address:
;
(14) Purpose of coming to U. S., ;
(15) Condition of health, ;
(16) Height, ; Complexion, ; Color of hair, ;
(17) Color of eyes, ; Identification marks, ;
(18) Examined by Inspector ;
(19) Accompanied by ; How admitted as U. S. Citizen;
(20) Remarks:

On same manifest: Daniel A. Serritella, 1142 S. Mich. Blvd., Chic. Antony J. Prignano—722 Bunker St., Chic. Jacob Guzik, 7240 Luella Ave., Chicago, Wm. V. Pacelli, 771 Dekoven St., Chicago, Rocco Fischetti, 424—2nd st., Brooklyn.

(Signature) THOS. V. KIRK
(Official title) *District Director of Immigration Jacksonville District.*

120 U. S. Department of Labor
Immigration Service
File #311/1227 Department Warrant #55716/671
Dated: December 11, 1930

Reopened hearing conducted by: D. E. Ellefson—Immigrant Inspector Chicago, Illinois, March 31, 1931—2:00 P. M.

Report of Reopened Hearing in the case of Antonio or Anthony or Tony Volpe alias "Mops" Volpe alias Albert Lopez

Hearing Ordered Reopened by W. W. Husband, Second Assistant Secretary for the Introduction of Additional Evidence.

Present:

Antonio or Anthony or Tony Volpe alias "Mops" Volpe alias Albert Lopez, Alien.
John Elliott Byrne Attorney
Miles J. Devine Attorney
Thomas Calabres Bondsman
Assistant U. S. Attorney T. D. Healy
Helen C. Rolleston Stenographer
D. E. Ellefson Inspector
Emit F. Phillips—U. S. Immigrant Inspector—Witness

Mr. Byrne: On behalf of Mr. Volpe, Mr. Devine and myself, desire to object to the reopening of the case at this time and in this manner. As you, of course, know, we have filed a petition for habeas corpus sometime ago, about two weeks ago, in the District Court of the United States for the Northern District of Illinois, before his honor James H. Wilkerson, and the judge entered an order that the writ of habeas corpus issue and that the respondent, Mr. Smith, of the Department of Labor, make his return to the writ in that case in the District Court on March 31, 1931, so that Mr. Devine and I contend that the jurisdiction of the entire proceeding is now in the District Court of the United States and not before the Department of Labor, and that no proceedings can be properly had before the Department of Labor, unless and until some order is entered by the District Court which would allow further proceedings here.

Inspector: The second assistant Secretary of Labor, the Honorable W. W. Husband, has authorized the reopening of this case as evidenced by a radiogram received by the District Director of Immigration, Chicago, Illinois, March 30, 1931, reading as follows: "Washington DC 112PM Mar 28 1931 US Immigration Service Chicago Ill Warrant Deportation Antonio or Anthony or Tony Volpe Alias Mops Volpe Alias Albert Lopez Canceled Stop Reopen Case Introduction

New Evidence Husband 138P'' and in accordance with
121 that authority, the District Director of Immigration Chicago, Illinois, has ordered the case reopened for the introduction of additional evidence, and has delegated me to conduct the reopened hearing. Therefore, the case stands reopened.

Alien Advised by Inspector Previous Oath Taken is Still Binding:

Mr. Byrne: We want it clear on the record that Mr. Volpe, and Mr. Devine and myself are attending here under protest and in response to written directions from this office, the Chicago Office of the Immigration Service directing us to attend for further hearing, and we are, as I say, attending under protest and with a view to protecting Mr. Volpe's rights in the matter.

Inspector to Alien: Q. Are you the one and same Antonio or Anthony or Tony Volpe alias "Mops" Volpe alias Albert Lopez who was given a hearing by me under Department Warrant #55716 671 dated December 11, 1930, hearing closed January 21, 1931?

A. Yes sir.

Mr. Byrne: Mr. Inspector, I have the letter from Mr. Smith of this office dated March 28, 1931, in which he states that the Secretary of the Department of Labor has withdrawn the Warrant of Deportation issued February 25, 1931, against Mr. Volpe. May I have the record show that it was shown that I received such a letter.

Mr. Devine: And I also received such a letter.

Mr. Byrne: And that Mr. Volpe also received such a letter and that Mr. Thomas Calabres, as surety, received a similar letter.

Inspector to Alien: I now show you a list of the United States Citizens on United States Department of Labor Form 630, which purports to be a list of the United States Citizens who arrived on the airplane General Machado NC-55, which departed from Havana, Cuba, June 24, 1928, and arrived at the port of Meacham Field, Key West, Florida, June 24, 1928, and call your particular attention to #4 on that list, and ask you if you are the one and same Anthony Volpe as shown as #4 on that list?

Mr. Byrne: Mr. Inspector we object to the examination of Mr. Volpe for the reasons already stated, also for the additional reason that the Warrant of Deportation having been withdrawn, the case now, apparently, is a new case and we

have not been furnished with any Warrant of Arrest or any other paper or document showing the charges which are now being urged against Mr. Volpe.

Inspector: This hearing is conducted under Depart-
122 mental Warrant #55761/671 dated December 11, 1930, which is a part of this record and known as Exhibit "A".

Alien: A. Yes sir.

Inspector: A copy of that list of United States Citizens on United States Department of Labor form #630 is hereby introduced in evidence, made a part of the hearing and marked Government Exhibit "H".

Q. Do you understand that?

A. Yes.

Mr. Byrne: Mr. Inspector we object to the introduction of the document for the reasons already stated and some additional reasons, which I don't know whether you desire me to state or not.

Inspector EMIT F. PHILLIPS called and duly sworn:

Q. What is your name and official designation?

A. Emit F. Phillips, Immigrant Inspector.

Q. Where are you stationed?

A. Key West, Florida.

Q. Were you stationed at Key West, Florida, during the year 1928?

A. I was.

Inspector Ellefson: I now show you Government Exhibit "H" and ask you what it is?

A. It is a list for United States citizens.

Q. Are you the one and same Inspector Emit F. Phillips who examined and admitted the persons listed thereon at Key West, Florida, June 24, 1928?

A. I did.

Q. Calling your attention to the name of Anthony Volpe listed thereon, as #4, do you see him in this room?

A. I recognize one man as a part of six and is listed there.

Q. Who is the man you recognize?

A. This man here, who came in with the party (Inspector Phillips indicates alien)

Q. What do the red check marks on that list indicate?

A. Indicate that they were examined and passed as citizens of the United States.

Q. Who made the red check marks?

A. I did.

Q. And the word "Argentine" in holographic form in red ink, who inserted that?

A. I inserted that as well as everything in red ink. I inserted that in red ink.

Q. In what form was the list when you first received it?

A. It had all the typewritten matter on, with the exception of the certification beginning with line ten to eighteen inclusive, that wasn't on the manifest.

Q. At the time the six above passengers were examined, did you insert the words "Mechan Field" in red ink in the upper left hand corner?

A. I did, the black pencil marks on the lower part of
123 the sheet, 6-0-0, that was inserted by the clerk in the office.

Q. What does that indicate?

A. That indicates there were six passengers; zero indicates no females, the second zero indicates no persons under 16 years of age.

Q. How did it come about that you inserted the word "Argentine" on line #4?

A. I questioned the person named on the same line #4 and asked him his place of birth. He said "Argentine" and as a matter of record I wrote it in the line, line #4. Those lines, if a person is born foreign, but naturalized, that line is usually left vacant by the transportation company and we usually insert the place of birth.

Q. This list was originally prepared by whom?

A. Pan-American Airways Incorporated.

Q. The person whom you recognize here as being one of that party, what, if anything did you ask him with respect to his citizenship?

A. I first asked him where he was born. He gave his place as Argentine, but stated he was a naturalized citizen of the United States, being naturalized in the Circuit Court of Cook County, Chicago, Illinois. I asked him to present his certificate of Naturalization. This request he could not comply with, stating that he had left his Certificate of Naturalization in Chicago.

Q. Did that complete your examination of him?

A. No, I questioned the person Anthony Volpe as to how he got his citizenship papers and satisfied myself that he was

a citizen of the United States, and being satisfied that he was a citizen of the United States, I admitted him as such.

Q. The person whom you recognize in this room, is he the one and same Anthony Volpe whom you examined and admitted as a citizen of the United States at the port of Key West, Florida, June 24, 1928, having arrived on the Airplane General Machado NC-55 from Havana, Cuba?

A. Yes.

Inspector to Attorneys: Mr. Counsels, is there anything you wish to present at this time?

Mr. Byrne: Yes, we deserve to cross examine the witness and to object to his examination of the paper and his testimony, for the reasons already given and additional reasons, which we will set forth in our brief.

Inspector: Alright, you may interrogate the Inspector.

Mr. Byrne to Inspector Emit F. Phillips: Q. You live in Key West, Mr. Phillips?

A. I do.

Q. How long have you lived there?

A. Since March 29, 1925.

A. Continuously since then?

A. Continuously.

124 How old a man are you?

A. 31 my next birthday.

Q. How long have you been an Immigration Inspector?

A. Since February 15, 1927.

Q. You have been stationed at Key West ever since you have been an Inspector?

A. I have.

Q. What are your duties in general, as an Immigrant Inspector, I mean your own duties?

A. Examining passengers arriving from foreign, giving hearings under Warrant proceedings, member of Board of Special Inquiry and various office duties.

Q. I wish you would remember for us, as closely as you can, how many passengers you have examined during the years you have been an Immigration Inspector?

A. That would be a mighty hard thing to do.

Q. It would run into thousands, wouldn't it Mr. Phillips?

A. I wouldn't make any statement as to the number.

Q. Well, you haven't any doubt, have you, that you have examined thousands of passengers?

A. I wouldn't say that.

Q. Well, you must have some idea?

A. There are five Immigrant Inspectors stationed in Key West, Florida. At times possibly one of us board the boat and sometimes it is necessary for the five to board. The passengers are split up between five and there is no list, anywhere, to show the number of passengers each individual inspector examined, and so I wouldn't make any statement as to how many I have examined while I have been in Key West.

Q. That appears to be tantamount to a refusal to answer the question, is that the way you are willing to leave it?

A. No, I haven't refused to answer any questions, but you asked me a question I cannot answer. I can give you this much, we examine approximately thirty to fifty thousand passengers a year, but that examination is made and divided among five immigrant inspectors.

Q. And the five inspectors there, in four years which you have been there, have examined, you would state from thirty to fifty thousand passengers a year?

A. Yes.

Q. And you do your share of that work, approximately one-fifth, I presume?

A. Approximately yes.

Q. Now, Mr. Phillips, can you recall now, from whom you first received this paper Government Exhibit "H"?

A. Yes.

Q. From whom?

A. Would you like to have his name?

Mr. Byrne: Yes.

A. Morgan.

Q. Who is Mr. Morgan?

A. Mr. Morgan was representative of Pan-American Airways.

Q. Now, where were you when you received it, in Key West?

125 At Mechan Field, Key West.

Q. Where was the typewriting placed on it?

A. I presume in Havana.

Mr. Byrne: Havana Cuba.

Q. The typewriting, other than the certification to which you have referred, but the rest of the typewriting was placed thereon before you got the paper, outside of your presence by some unknown person?

A. Yes.

Q. Do you recall of your own personal recollection, at this

time, that Mr. Morgan was the person who gave that paper to you?

A. Yes.

Q. Have you talked with Mr. Morgan about the paper since he gave it to you?

A. I have not.

Q. You have never talked to Morgan about the paper since June 24, 1928?

A. I have not.

Q. Is Morgan still operating on the airplane line?

A. I don't know.

Q. How long since you last saw Morgan?

A. About a year.

Q. You state that you recall Mr. Volpe distinctly and recall that you asked him some questions on June 24, 1928, at Key West?

A. I do.

Q. Do you recall this party quite distinctly, the party that Mr. Volpe was in?

A. I do.

Q. Will you describe Mr. Serritella, a member of that party as to personal appearance?

A. I possibly remember him if I saw his face.

Q. Can you describe Anthony J. Prignano as to personal appearance?

A. No, I dont' believe I could describe any of them as to personal appearance.

Q. Can you describe Jacob Guzik as to personal appearance?

A. No, I don't believe I could describe any of them?

Q. You don't feel you could describe William V. Pacelli?

A. Those names you are calling off, those men were examined very quickly, they were merely asked place of birth and gave their birth as that of the United States, and any person born in the United States, we assume they are United States citizens, and there is one on the list when they are foreign born.

Q. Can you describe William V. Pacelli?

A. No.

Q. Rocco Fischetti?

A. No.

Q. Did you make any record of this party of any of its members, other than this exhibit "H"?

A. We have the number of passengers, etc. Yes, we have a record of that in our office.

Q. By whom was that record made?

126 A. One record I made myself.

Q. Well, now, what conversation did you have with Daniel A. Serritella, Mr. Phillips, on June 24, 1928?

A. Asked him his place of birth, he gave me his place of birth as United States and I admitted him as a citizen of the United States by virtue of his birth in the United States.

Q. Did you ask him anything besides his place of birth?

A. Asked him if he was a citizen of the United States.

Q. Is that all you asked him?

A. That's all.

Q. Did you ask him his age?

A. Yes, everything written in typewriter we verify, that red check indicates the manifest is correct as given by the passengers.

Q. What did he say his age was?

A. I don't remember his age?

Q. Do you remember what Prignano stated as to his age?

A. I don't remember.

Q. Do you remember what Jacob Guzik stated to his age?

A. I don't remember his age.

Q. Did you ask Anthony Volpe as to his age?

A. As I stated before, everything is written.

Q. Can't you answer yes or no?

A. Yes.

Q. What did he say his age was?

A. I don't remember.

Q. Did you ask him when he was born?

A. No.

Q. Didn't you ask him that?

A. As to when he was born?

Mr. Byrne: Yes.

A. No, I didn't ask him as to when he was born.

Q. Did you ask any of the members of the party as to when he was born?

A. I did.

Q. Why didn't you ask him?

A. Because the place and time of birth was not written on the manifest and it was not necessary to have that in the manifest. I only verified that which is written by the company in typewriter.

Q. But you asked Volpe as to his place of birth, but not date of birth?

A. Yes, I asked him his place of birth.

Q. Did you ask Mr. William Pacelli as to his date of birth?

A. If his date of birth is listed on the manifest, I did.

Q. No, we would like to have your personal recollection as to whether you asked Mr. William V. Pacelli his date of birth?

A. No, I have no personal recollection that I asked him the date of birth.

Q. When did you place this certification on the paper, Mr. Phillips?

A. In March, 1931.

Y. 21st day of March, 1931? The date shown over the Notary Signature?

A. Yes.

127 Q. At whose request did you do that?

A. Place that certification?

Mr. Byrne: Yes.

A. At the request of our district headquarters.

Q. What is the name of the party who asked you to place the certification on it?

A. Name of the party?

Mr. Byrne: Yes.

A. Assistant District Director of Immigration, Eyster.

Q. When did Mr. Eyster ask you to place the certification on the paper?

A. Sometime in March.

Q. Was that request verbal or in writing?

A. Wire.

Q. Isn't he stationed in Key West?

A. No, Jacksonville.

Q. Have you the wire with you, that he sent you?

A. Yes, I believe I have.

Q. Will you let me see it please?

A. (Mr. Byrne is given wire to read)

Q. At the time of Volpes' entry, did you make any record pertaining to his entry, other than this Exhibit "H"?

A. Yes.

Q. What record did you make?

A. Well, we have a printed form that we put the name of the vessel arriving, and the number of passengers, and male, female, etc.

Q. Have you got that record here?

A. No, I haven't that record here?
Q. Where is that? Key West?
A. Yes, Key West.
Q. What does that record consist of?
A. Just total number of passengers aboard any particular vessel, and as I stated before, female, male, over and under sixteen years of age.

Mr. Byrne to Inspector Ellefson: Mr. Inspector, Mr. Devine and myself, as counsels for Mr. Volpe, would like to have that document brought here for our examination.

Inspector Ellefsqn to Inspector Phillips: Q. Have you any records in the Key West Immigration Office, or elsewhere, that would show how Mr. Volpe was admitted to the United States?
A. No.

Inspector Ellefson to Attorneys: Mr. Counsels, I think that document is immaterial.

Mr. Byrne: Mr. Devine and myself feel we should have an opportunity of examining the original document and we renew our request to have it sent here for our examination.

128 Inspector Ellefson: Well, the document is prepared merely for statistical work and would not show the names, but would merely show the number of citizens, aliens if any, and whether or not they were males, females, or persons under 16.

Mr. Byrne to Inspector Phillips: Q. How many passengers were on this airplane on this trip?
A. Seven.
Q. How large a crew did it have?
A. I am not positive whether were wireless operators at that particular date or not, but pilot and mechanic. I don't know whether they were carrying a wireless operator or not.
Q. Who was the seventh passenger?
A. Jorge Ponce.
Q. Where does he live?
A. His bona fide residence is Havana, Cuba.
Q. What is his business?
A. He is Cuban Consul stationed at Key West, Florida.
Q. Now, did you make any other records besides this manifest, Exhibit "H" and the records you have just referred to?
A. There is no record made of the six United States citizens or those who were admitted, other than the number of passengers arriving, as I stated before.

Q. Did you make any personal notes at that time, on June 24, 1928, about the arrival of this airship and its passengers?

A. No, they were not necessary.

Q. Well, you made none?

A. No.

Q. After June 24, 1928, when was the first time that you talked with anybody or had any communication about the arrival of this party of six, shown by Government Exhibit "H"?

A. I don't remember all the communication I had about it.

Q. Did you have any communication about the party or about Mr. Volpe prior to receiving the telegram that you showed here from Mr. Eyster?

A. That is subsequent to June 24, 1928.

Mr. Byrne: Yes.

A. I don't remember any communication I had with anyone, with the exception of the communication that was received by our office from Jacksonville.

Q. You refer to the telegram that you showed us here, at my request?

A. Yes.

Q. In other words, to be certain about it, you received no communication, had no conversation about Mr. Volpe, at any time before this case originated in the Department of Labor, which was in December, 1930. All the communications and all the conversations about it, have been since December, 1930, have they not Mr. Phillips?

A. I am not so positive that there had not been, but I don't remember positively.

Q. Don't you recall that you ever had any conversation about this matter before December, 1930?

129 A. No, I don't recall.

Q. Well, when you received this telegram from Mr. Eyster, at that time, you surely had a mental impression as to whether or not the matter was new to you or whether you had been talking to someone about it or corresponding with someone about it?

A. No, I had not corresponded with anyone. I am positive of it.

Q. See if this isn't a fair, correct statement of the situation from June 24, 1928. You have no recollection of anything being said or written to you about Volpe until sometime early in the year 1931?

A. No.

Q. If you had any conversation or communication during the intervening time between June 24, 1928, and the early part of 1931, that its faded from your mind?

A. I cannot recall anything at this time.

Q. Now, as a matter of fact, when this Exhibit "H" came to you, the entry,—with respect to naturalization, was plain was it not, the words "Circuit Court of Cook County" were not in there?

A. Yes.

Q. They were in there?

A. Yes.

Q. Now, you didn't Ask Mr. Volpe his age?

A. Yes, I asked him his age.

Q. You did ask him his age?

A. Yes.

Q. And you say you asked him where he was born?

A. I did.

Q. But you did not ask him the date of his birth?

A. No.

Q. And you didn't ask him what town he was born in?

A. No.

Q. Did you ask him how long he lived in the United States?

A. I don't remember.

Q. Now, did you make an affidavit about the landing of Volpe?

A. I did

Q. Have you got that affidavit here?

A. I have.

Q. May I see it?

A. (Affidavit shown to Counsels.)

Q. Mr. Phillips, did you obtain from Mr. Volpe, at any time, any written statement or declaration in connection with his landing on June 24, 1928?

A. No.

Q. This list of United States citizens bears no signature of yourself or any other official of the United States, other than your signature placed on there on March 21, 1931, does it?

A. No.

Q. Nor is it signed anywhere by Mr. Morgan, the man from whom you received it?

A. No.

Q. Referring to your affidavit which you showed us 130 dated March 21, 1931, it states that you arrived at the airport at 4:30 P. M. June 24, 1928. How do you know it was 4:30 P. M.?

A. We have a record at our office of the date, exactly when and where we check on and off duty.

Q. Who made that record?

A. I make it myself, and there is also a copy of the record made by the Inspector in Charge. His office makes an exact copy and sends it to district headquarters, but the original copy, each individual inspector keeps his time report under the supervision of the Inspector in Charge, of course.

Q. When were the marks in red ink placed on the list by you, Mr. Phillips?

A. June 24, 1928.

Q. Was the word "Argentine" written in at that time?

A. It was.

Q. Now you state in your affidavit, "Volpe was requested to present his Certificate of Naturalization, but claimed he had left the Certificate in Chicago, Illinois?" How do you know that?

A. Because I asked him for it.

Q. The statement in your affidavit is based on your mental recollection, solely?

A. Yes.

Q. You state that Volpe did not claim that his naturalization at Chicago had been cancelled. Is that based on your mental recollection solely?

A. Not quite on mental recollection, but by records also.

Q. What records?

A. Manifest form 630.

Q. Based on the manifest and your mental recollection, nothing outside of that?

A. No.

Q. What is there on the manifest that recalls to you that he did not say it had been cancelled?

A. It says, "List of United States Citizens" printed form. If he hadn't a been a citizen, he would have been transferred to the alien manifest and wouldn't have remained on the "List of United States Citizens."

Q. Then you are judging what he said by what you would have done, had he said something different?

A. Yes, something different if he would have said his

Certificate of Naturalization had been cancelled. I believe that's what you are taking about.

Q. You didn't make any notation anywhere, that Volpe claimed he had left his Naturalization Certificate in Chicago?

A. No.

Q. Now, was there any other Inspector at the landing of this party, besides yourself?

A. No.

Q. You were there alone?

A. I was the only Immigrant Inspector present there.

Q. Did you have a desk there?

A. Yes.

131 Q. Is there an office there at the landing field?

A. Office especially for the Immigration Service.

Q. Has any other Immigration Inspector made an affidavit about this matter?

A. Not to my knowledge.

Q. Who placed the figures near the bottom of sheet Exhibit "H", "6-0-0?

A. Someone of the office force, I don't know the name of the person.

Q. Do you know when they were placed on there?

A. They were placed on there, the morning on June 25, 1928.

Q. And you say the six means six persons in the party?

A. Six persons admitted on the list.

Q. And the first zero means no women?

A. No females.

Q. And the second zero no children under 16?

A. Exactly.

Q. That's not your writing, is it?

A. I am not positive.

Q. And you are not positive whether those red check marks are your checks, are you?

A. I am positive.

Q. How can you identify your red check marks from someone elses, if you can't identify your own handwriting?

A. Because at the time those red check marks were made on that particular list, I was the only person who had that list in possession. They were made at Meachan Field. The black writing was made in the Immigration Office.

Inspector Phillips examines list: I did not write these pencil marks.

Q. Where has this Exhibit "H" been since June 24, 1928?

A. Those lists are sent to our district headquarters in Jacksonville, Florida.

Q. And kept in Jacksonville, as far as you know?

A. Yes, as far as I know they are kept on file in Jacksonville.

Q. Now Mr. Phillips, isn't this a fair statement, that your entire testimony here, and your affidavit, as based not upon your mental recollection, but upon the fact that you saw a few months ago, this manifest for the first time since June 24, 1928, and that the things you testified to, and the conversations you testified you had with Volpe on June 24, 1928, are the things you probably would have done, at that time, but that you don't have a mental picture in your mind, now, of Volpe and your talking and making the statements which you have testified to. Is that a correct statement of your position?

A. No.

Q. What is your mental impression?

A. I claim the statements that I have made are part mental recollection, and records.

Q. Well, do you recall any communication or talk about Volpe before you received the telegram from Mr. Eyster, of March 20, 1931?

A. No, I don't remember of having any conversation.

Q. Who gave you the telegram?

A. The telegram didn't come to me, it came to the Inspector in Charge.

Q. Well, the first time you saw the telegram, who gave it to you?

132 A. The Inspector in Charge.

Q. And what is his name?

A. Claude Albruy.

Q. What did he say?

A. He presented the telegram to me and let me read it.

Q. You read it and then what was said?

A. Mr. Albruy gave me orders to comply with the telegram.

Q. Can you tell us the substance of his words?

A. He says "According to the records of this office it appears that you examined the passengers on the airplane General Machado arriving at Meacham Field, June 24, 1928," and ordered me to comply with the telegram, which I did, making the affidavit and certifying the manifest, both of which you have seen.

Q. In what form is the record which shows that you examined the party landing on this airplane?

A. We have a head tax bill, and the Inspector examining that particular vessel, the head tax bill is with his initials.

Q. Do you have a tax bill when no head tax is paid?

A. We make a head tax bill regardless of whether there is any head tax collected or not, if there is an alien among the passengers.

Q. Was there an alien among these passengers?

A. Yes, there was.

Q. Who was he?

A. Jorge Ponce.

Mr. Byrne to Inspector Ellefson: Q. Mr. Inspector, we would like to have that original head tax bill produced here for our examination.

Mr. Byrne to Inspector Phillips: Q. You didn't bring that with you, Mr. Phillips, did you?

A. I didn't.

Inspector Ellefson: That would not have any bearing on the matter insofar as showing that Mr. Volpe was finally admitted by Inspector Phillips.

Mr. Byrne: Well, we would like to examine that for ourselves, and also as bearing upon Mr. Phillips' recollection of this matter, which he had testified to in great detail, after a period of four years, and after examining approximately fifty thousand passengers, personally, since that time.

Inspector Ellefson to Inspector Phillips. Q. Inasmuch as there are admitted at the port of Key West, Florida, approximately 50 thousand persons each year, how do you recollect this small individual party?

A. If my memory serves me correctly, this party came in on a Sunday afternoon, and being only seven passengers aboard the plane, it was not a very hard matter to remember something about it.

133 Q. Was that the only duty you performed that day?

A. The only duty I performed that day, and as I said before, it was a Sunday afternoon.

Q. Have you any other recollection which would tend to assist you in recalling this particular party aboard the airplane General Machado June 24, 1928, or had you had any advance information as to the party, etc.?

A. Yes, the airplane company always gave us advance information as to the number of passengers who were aboard, etc.

Mr. Byrne: I object to that.

Q. Can you answer the question with reference to this particular party?

A. Yes, I had advance information that there was a party due to come in on a Pan-American Airplane, in some way connected with "Al" Capone.

Mr. Healy to Inspector Phillips: Give complete information as to the airplane.

Inspector Ellefson to Inspector Phillips: Q. Do you mean that the airplane was connected with "Al" Capone?

A. No, this party that came in, that's what was told me by a representative of the airplane company.

Q. Did you know, at that time, whom they referred to when they said "Al" Capone?

A. No, only other than what I had read in the papers about him.

Q. Assuming now that Mr. Volpe was not, on June 24, 1928, a citizen of the United States, did he, during the course of your examination of him, and inspection, make any statement that was false and misleading?

Mr. Byrne: I object.

Attorney advised to state objection in brief.

A. I didn't at the time I examined Mr. Volpe, believe that he made any false statements. I was satisfied with all the statements he made.

Mr. Calabres leaves room.

Mr. Byrne to Inspector Phillips: Q. Now, after your superior told you to comply with the telegram of Mr. Eyster, what was the first thing you did?

A. I don't remember that first thing I did, I remember all that I did, but I don't remember which was first and which was last.

Q. Well, alright, then tell us, as well as you can, in the order of your doing it?

A. I had the form 630 certified, that I examined those passengers, and admitted them as Citizens of the United States; I prepared an affidavit before a Notary Public and presented them to the Inspector in Charge, copies of them.

Q. First, what did you do with respect to get hold of form 630, or Exhibit "H"?

A. An Inspector brought it from Jacksonville, to Key West.

Q. What did you do about it, did you do anything? How

long after you saw the telegram, was it that you saw Exhibit "H"?

A. The same day.

Q. What Inspector brought it from Jacksonville?

134 A. Inspector Caviness.

Q. You looked at the manifest did you, before you made your affidavit.

A Yes.

Q. Did you talk to Inspector Caviness about it?

A. I did not.

Q. Did he hand you the manifest personally?

A. No.

Q. Who handed you the manifest or where did you first see it?

A. Inspector in Charge handed me the manifest, telegram, etc.

Q. And what did he say?

A. He said comply with the elegram.

Q. Did he hand you anything beside the manifest?

A. Not that I remember, not that I can recall.

Q. What time of day was that?

A. Sometime between 9:00 A. M. and 4:30 P. M.

Q. What did you do when you got the manifest?

A. I read the telegram and immediately complied with the telegram, as far as I could.

Q. Well, tell exactly what you did, will you please?

A. I examined the manifest to see if I was the person that had handled the manifest and made those marks and checks, as well as the record head tax statement, to be absolutely positive that I was the person that worked that particular party and I put the certification on the manifest that I did work and the check marks on that manifest were my check marks; I made the affidavit.

Q. Now, you didn't have to look at the manifest to know that, you knew all that on there before you saw the manifest, according to your testimony here? Isn't that true? You knew that you examined this party, you told the Inspector a moment ago that you remembered the party distinctly, that an "Al" Capone party was coming there?

A. We always look at the manifest because we have made records on that manifest.

Q. Well, what question had arisen that made you look at it?

A. The Question which stated for the inspector to certify

the manifest, and naturally to certify to the manifest, I had to look at it.

Q. Did you look at any other records besides the manifest?

A. Yes, I looked at the head tax statement.

Q. Anything else?

A. No.

Q. Well, you looked at your time record, didn't you?

A. Oh, my time record, yes I looked at my time report.

Q. And you looked at all these records before you made out the affidavit?

A. Yes, I looked at my time report, etc.

Q. This Notary Public, is he a Notary Public in the Immigration Office?

A. No.

Q. Where is his office located?

A. In the same building.

135 Q. Who typed up the affidavit, you?

A. Typed it.

Q. Did you show it to anyone before you acknowledged it before the Notary?

A. No.

Q. Didn't you take it into your superior and ask him if that affidavit was satisfactory?

A. I did, after it was notarized by the Notary Public.

Q. What did he say?

A. He took the affidavit. I don't remember him saying anything.

Q. What did you say to him when you handed him the affidavit?

A. I don't remember what I said to him.

Q. Do, you remember whether he said anything or not?

A. I don't remember what he said. It wasn't important so I didn't try to remember it.

Q. Did you have any conversation with anybody else about the Volpe matter?

A. Excepting the Inspector in Charge?

Mr. Byrne: Yes.

A. No.

Q. Did you talk to the Inspector who brought the manifest from Jacksonville?

A. No.

Q. You didn't talk to him at all?

A. No.

Q. When were you notified that you were to appear in Chicago to testify? Can't you tell that from your recollection? If you want to refer to the paper I have no objection?

Witness refers to telegram:

A. I received a telegram from the Bureau of Immigration, Washington, D. C. on March 27, 1931.

Attorney Byrne examines telegram.

Q. How did you receive that telegram, from whom?

A. Messenger boy, Western Union.

Q. Did you talk with anybody about the telegram after receiving it?

A. I did.

Q. With whom?

A. Inspector in Charge.

Q. What was the conversation?

A. I just merely presented it to the Inspector in Charge.

Q. Did you say anything?

A. I don't remember saying anything, the telegram spoke for itself.

Q. Did he say anything?

A. He said, "Prepare to go to Chicago".

Q. Was anybody present when you handed him the telegram?

A. Yes.

Q. Who else was present?

A. Do you want everyone that was present there. There was no one in particular in the room, but he read the telegram in the presence of some other people?

136 Q. Who were they?

A. His family.

Q. Give their names please?

A. Mrs. Albury.

Q. Was this in the Immigration Office?

A. No.

Q. Where was it?

A. Mr. Albury's home.

Q. Was there any conversation other than his statement to you, other than to proceed to Chicago?

A. Not that I remember.

Q. I mean about Volpe?

A. No.

Q. Did you talk with anyone after that, about your trip to Chicago?

A. No.

Q. Did you see him again, I mean your superior, before you left?

A. Yes.

Q. Did you talk with him then?

A. Not relative to the Volpe matter, no.

Q. Well, what did you say to him?

A. I don't think I said anything to him which would have bearing on this particular case.

Q. Did you say anything to him about going to Chicago?

A. Possibly I did, in a general way.

Q. Well, don't you know whether you did or didn't?

A. Well, I talked over some personal matters, but has no bearing on this case.

Q. Can't you recall whether he said anything about going to Chicago?

A. No, I can't recall saying anything about going to Chicago, other than what I have already stated, of course.

Q. I don't recall you have stated anything after seeing him in his house. You have not said anything to him about coming to Chicago?

A. Well, I didn't say I didn't have any conversation with him about going to Chicago.

Q. Well, did you say anything about going to Chicago?

A. Well, just merely that the Inspector in Charge has prepared what papers it would be necessary for me to carry from the office for this, and that he would take care of the details of transportation, etc. That is practically the substance of the conversation.

Q. Did he prepare the papers for you to bring to Chicago?

A. He took them from the files, they were already prepared.

Q. You received them from him?

A. Yes.

Q. From the Inspector in Charge?

A. From the Inspector in Charge.

Q. And when he gave you the papers, what did he say?

A. He said "These are the records of the case and you will possibly want to refer to them and it may be well for you to carry them along with you."

137 Q. Any further conversation at that time?

A. Not that I can remember.

Q. Any further conversation later, with him?

A. Yes, I had conversation with him.

Q. About going to Chicago?

A. Possibly, in a personal nature, but nothing pertaining to the Volpe matter, other than that which I have already stated, I cannot add anything to that.

Q. Well now, did you come to Chicago alone?

A. Yes.

Q. Who did you talk with in Chicago about the Volpe case first?

A. Mr. Clark, I believe.

Q. What did you say to Mr. Clark?

A. Introduced myself as coming from Key West to testify in the Volpe case.

Q. Well, tell us the conversation please?

A. He called in Mr. —

Inspector Ellefson: "Ellefson".

Mr. Byrne: Mr. Inspector, let the record show the presiding officer informs the witness that his name is Ellefson.

A. continued: Ellefson and I went in company with Mr. Ellefson to the Post Office Building, I believe, to talk with Mr. Healy, and I was informed by the Inspector that I would be called at 2:00 o'clock.

Q. Is that the first time you ever saw Mr. Healy?

A. Mr. Ellefson.

Q. Anyone else present besides Mr. Ellefson when you saw Mr. Healy?

A. I don't know.

Q. When was it you saw Mr. Healy?

A. This morning.

Q. It was the first time you ever saw Mr. Healy?

A. Yes.

Q. By the way who told you that the party coming over had some connection with Al Capone?

A. If I remember correctly, it was Mr. Morgan.

Q. When was it that Morgan told you that the party had a connection with Al Capone?

A. Same afternoon that I went aboard the airplane.

Q. Just what did Morgan say?

A. He said "We have a party coming in on the plane today, that I understand to be in some way connected with Al Capone. Have you heard anything about it?" and I told him "No".

Q. Did Morgan go out to the landing field when the plane arrived?

A. I don't know.

Q. Do you know whether Morgan was there when you were examining the party?

A. I don't know.

Q. Did I understand you to say that Morgan gave you the manifest?

A. He did.

Q. When did he give you the manifest?

A. After the plane arrived.

Q. Where did he give you the manifest?

A. Inside the building.

138 Q. What building?

A. The Pan-American Building has the various offies assigned to the various government agencies.

Q. Is that at the landing field or at Key West proper?

A. Landing field.

Q. Well then you know that Morgan was there when the plane arrived?

A. I don't know where he was when the plane arrived.

Q. Well, you said a moment ago, that you didn't know where Morgan was when the airplane arrived, and now you state he gave you the manifest after the plane arrived?

A. Well, he couldn't give me the manifest until the plane arrived.

Q. Didn't you say Mr. Morgan was on the landing field?

A. I don't know where he was. He might have been in one of the buildings.

Q. You mean you didn't know whether or not he was standing on the landing field at the exact moment the plane landed?

A. Yes, that's what I mean.

Q. Did Morgan tell you in advance that there was any question about Volpe's citizenship?

A. No.

Mr. Byrne: I guess that's all.

Mr. Byrne to Phillips: Q. Mr. Phillips, referring to the sheet you produced, "Daily Time Report" for June, 1928, is that your signature at the bottom of the sheet?

A. It is.

Q. And the pencil notations in the body of the sheet, are in your handwriting?

A. They are.

Q. Calling your attention to the date June 24 on the sheet, I call your attention to the word "Sunday" written in, in pencil. You note that word Sunday is written in pencil?

A. I do.

Q. So that's your recollection that this party landed on Sunday, is based on the fact your time sheet has written in "Sunday". Is that true?

A. It is true that the time report has "Sunday" written in.

Q. And the statement you made that the plane arrived about 4:30 is based upon that fact, that this sheet shows time of arrival of you on duty at 4:30, is that correct?

A. Yes, the time sheet shows that I arrived on duty at 4:30.

Q. That's the regular hour for your arrival on Sunday duty, isn't it?

A. No, I have no regular hour for Sunday.

Q. Do you know what hour you arrived on duty Sunday, the 3d of June, 1928?

A. My record will show.

Q. Have you any mental recollection of that?

A. No.

Q. Do you recall on what hour you arrived on duty on June 10, 1928?

A. No, I have no mental recollection of any Sunday duties, as they are irregular.

139 Q. And the same answer as to the Sunday of June 17, 1928?

A. Answer the same.

Q. Do you know Mr. Morgan's full name?

A. No, I don't.

Q. Do you know where he lives now?

A. No.

Inspector Ellefson to Mr. Volpe: Q. Do you wish to question Inspector Phillips?

A. Yes sir.

Mr. Volpe to Inspector Phillips: Q. Mr. Phillips, when I landed in Key West, at the Immigration Department, you asked me what my name was, where I was born, my home address, if I was married, if I had any children, if I had my own home, and you asked me if I was a citizen of the United States and I said to you "I got my first papers" you said to me "How long you been in the United States" I says "23 years" and you said to me, "Were you ever an American citizen" I says to you "Yes, 1920, March 27". You asked me who naturalized me, I said "Judge David, Circuit Court" is that right?

A. All that you have said "Is that right" Part of what you have said, some I don't remember of ever asking you.

Mr. Byrne to Inspector Phillips: Q. Mr. Phillips, assume an alien returning to the United States after a short absence of two or three days, stated that he had his first naturalization papers, but not the final naturalization papers, would you admit him?

A. If he were admissible as a returning resident, I would.

Q. How would you determine if he was admissible as a returning resident, in that situation?

A. Various ways to determine that. Quite a lengthy statement to make as to how we determine whether the alien has a lawful residence in the United States.

Q. Wouldn't the fact that he stated he had a lawful residence, and that he had been granted the first naturalization papers be satisfactory proof to your mind that he was entitled to enter?

A. No sir.

Q. Well, suppose you tell us just what you would do in that situation, what inquity you would make, what investigation you would make?

A. There is no set rule or set course an Immigrant Inspector has, to determining a man's right to be readmitted for residence. Every case is examined and passed on its own merits. There are no two cases alike, and as I said before, I would have to sit here and talk two hours to tell you the different angles and ways there are to determine the admission of an alien, that is, for return residence. I can tell a few instances; Some we require to have return per-
140 mits issued by the Department of Labor, Washington; some have their stamps on their passport showing they were issued a visa. If so, the number is put on the manifest.

Q. Assuming he is not any of those?

A. Well, if we are not satisfied he is a returning resident, hold him for a board of Special Inquiry, and the burden of the proof is on the alien, he must prove his residence.

Q. And if you were satisfied with his statement, you would let him in?

A. If I am positively satisfied that person is what he claims to be, he will be admitted.

Q. Even without papers?

A. It is according to what country he comes from.

A. Coming from Cuba?

A. If he has been in Cuba for less than six months, the law says he needs no documents or papers whatever.
Attest:
D. E. ELLEFSON,
D. E. ELLEFSON,
Immigrant Inspector.

Hearing continued to 2:00 P. M.—Friday, April 3, 1931 for the purpose of obtaining from the Key West, Florida office, documents desired by defendant's attorney.

Chicago, Illinois, April 3, 1931.

Alien appeared with Attorneys Byrne and Devine for the purpose of continuance of hearing in this case, and by reason of the fact that documents had not been received, hearing was adjourned until 2:00 P. M. Monday, April 6, 1931.

Attorney Byrne demanded copy of hearing but was not complied with.
Attest:
D. E. ELLEFSON,
D. E. ELLEFSON,
Immigrant Inspector.

141 Continued Reopened Hearing Conducted by Inspector D. E. Ellefson at the U. S. Immigration Office, 1343 Transportation Bldg., 608 S. Dearborn Street, Chicago, Illinois, April 6, 1931, 2:15 P. M.

Present:

Antonio or Anthony or Tony Volpe, alias "Mops" Volpe alias Albert Lopez, Alien.
John Elliott Byrne, Attorney.
Miles J. Devine, Attorney.
Assistant U. S. Attorney, T. D. Healy.
Helen C. Rolleston, Stenographer.
D. E. Ellefson, Inspector.

Alien advised previous oath taken is still binding:

142 Inspector to Alien: Q. Are you the one and same Antonio or Anthony or Tony Volpe alias "Mops" Volpe alias Albert Lopez, whose hearing was adjourned March 31 1931, and continued until 2:00 P. M. this date?

A. Yes, sir.

Q. Have you any further evidence or witnesses you wish to present at this time?

Mr. Byrne: Examine the papers that were sent for, and cross-examine further, Inspector Phillips.

Inspector to Alien: I now show you United States Department of Labor form # 603 which is a Bill and Notice for Head Tax # 173282, which relates to the airplane, General Machado arriving at Key West, Florida, June 24, 1928, which I understand, is one of the documents requested.

Mr. Byrne: Are there any other documents, Mr. Inspector?

Inspector: Also a record of Arrivals at Meacham Field, Key West, Florida, during the month of June, 1928, which shows that the airplane, General Machado arrived there June 24, 1928, with one male alien over sixteen, and six United States male citizens over sixteen years of age.

A copy of the Head Tax Bill and Notice # 173282 is hereby introduced in evidence, made a part of the hearing, marked GOVERNMENT'S EXHIBIT "I."

A copy of the Record of Arrivals during the month of June, 1928, at Meacham Field, Key West, Florida, is hereby introduced in evidence, made a part of the hearing, marked GOVERNMENT'S EXHIBIT "J."

Also show you for your information, a notarized affidavit made by Claude Albury, Inspector in Charge, United States Immigration Service, Key West, Florida, certifying to the fact that the Record of Arrivals and the Head Tax Bill and Notice, are a part of the official records of the Key West Florida Office, and that his signature, attached to the Head Tax Bill was placed thereon by him June 25, 1928. The Record of Arrivals is referred to by Mr. Albury, as the Statistical Sheet, I believe.

Mr. Byrne: I assume that is what he means.

Inspector to Attorney: Q. Are those the documents which you requested on March 31, 1931?

A. They appear to be some of them, Mr. Inspector. I requested all the documents that bore on the landing of this particular party and particular airship on June 24, 1928. Apparently, some of the papers have not been produced. However, I would like to cross-examine the Inspector a little further about the matter, at this time.

Inspector Ellefson: So far as I know, that Record of Arrival sheet, or Statistical Sheet, and Head Tax Bill are all the records pertaining to that particular party which 143 arrived at Key West, Florida, June 24, 1928, on the airplane General Machado.

Mr. Phillips Called and Advised Previous Oath Taken Is Still Binding:

Inspector Ellefson to Mr. Phillips: Q. Are you the one

and same Inspector Emit F. Phillips who testified in this case on March 31, 1931?

A. I am.

Mr. Byrne to Inspector Emit F. Phillips: Q. I show you Government Exhibit "I" head Bill and Notice for head tax dated June 25, 1928, and also Government Exhibit "J," headed Record of Arrival, port of Key West, month of June, 1928, and ask whether there are any other records made or on file with the Immigration Department, referring to the arrival of Mr. Volpe's party on June 24, 1928, other than those papers and the large manifest, Exhibit "H"?

A. No, not to my knowledge.

Q. Was there not a paper known as an "alien manifest" made out in connection with the arrival of this party?

A. The alien manifest had absolutely no connection whatever with the party of six which were manifested on the form # 630 or Government Exhibit "H."

Q. Was there, or was there not an alien manifest made out in connection with the landing of this airplane on June 24, 1928?

A. There was an alien manifest presented containing one name, that of Jorge Ponce.

Q. When you say "presented" what do you mean?

A. I mean it was presented to me by a representative of the Pan-American Airways Incorporated.

Q. What was the representative's name that presented it to you?

A. Mr. Morgan.

Q. What was his position, if any, with the airplane company?

A. His title with the company, I don't know, other than that he was a representative with the company.

Q. What was done with that alien manifest?

A. That manifest was sent to Jacksonville, Florida, to our district headquarters.

Q. Have you ever seen it since it was sent there?

A. I have not.

Q. Now, was there anything in the nature of a manifest of the crew arriving on this airplane?

A. To my knowledge, no crew list was presented.

Q. Are you not required to receive a crew manifest on the arrival of aircraft at the port of entry?

A. If the crew be American citizens, no.

Q. How is that determined?

Inspector Ellefson to Mr. Byrne: Will you please be more

explicit in your question, as to exactly what is determined, the citizenship of the crew or whether or not a crew list should be presented.

Mr. Byrne to Inspector Phillips: Q. How is the citizenship of the crew determined?

144 A. A crew list must be presented during some trip, or at some trip, and the Inspector, examining Inspector, examines the crew, at that time, to ascertain what nationality they may be. If they be American citizens, it is not necessary to repeat this examination, if the same pilot, mechanic, etc. are maintained on that particular craft.

Q. Well, were all the crew of this particular vessel, on this particlular ship, American citizens?

A. They were, in fact all the pilots of the Pan-American Airways Incorporated, flying between Key West, Florida and Havana, Cuba, were American citizens and were known to be such by me.

Q. What did the crew consist of in this trip, who were they?

A. One pilot and mechanic.

Q. What was the pilot's name?

A. I don't remember his name.

Q. What was the mechanic's name?

A. I don't remember his name.

Q. You are very certain the crew consisted of only the two persons, the pilot and the mechanic?

A. I am not positive whether or not the crew, at that time, consisted of those two you named. However, there might have been a wireless operator, I am not certain.

Q. Well, if you don't know the names of the men who comprised the crew of the vessel, how are you able to state now, they were all American citizens?

A. Because all of the employees of the Pan-American Airways, stationed at Key West were known to me.

Q. Was there any record in the office, regarding the crew of this airplane?

A. Not to my knowledge, possibly there is.

Q. Can you tell us, Mr. Phillips, whether or not the law and regulations provide for a list of the crew and airmen on an aircraft bringing passengers to the United States from a foreign country?

A. Yes, a crew list is required, but as I stated before, if all members of the crew are American citizens, they do not have to present a crew list, they can refuse, and nothing can be done about it.

Q. Was there refusal in this particular instance, to furnish a crew manifest or crew list?

A. No, there was no refusal, to furnish a crew list, at that time, crew list not being necessary, I didn't ask for one.

Q. Do you know whether or not a crew list had ever been submitted for this airplane?

A. Possibly a crew list was submitted.

Q. Do you know whether or not one was?

A. I am sure one was presented at sometime, but I am not positive.

Q. Aren't you familiar with that part of the regulations requiring manifests and lists of crew men on airplanes to be filed with the Immigration Office at the port of entry?

145 A. Yes.

Q. Can you tell us what provision, that is, what provisions there are governing that matter?

A. Airplanes do not have to present manifest, but a card is furnished by the Bureau and the information necessary for manifesting of passengers arriving by plane is inserted on this card by the examining inspector. This rule was put into operation subsequent to the time I examined airplane General Machado arriving from Havana, Cuba, June 24, 1928.

Mr. Byrne: I offer in evidence, paragraph 3 of Rule 5, of the Rules and Regulations of the United States Department of Labor, Bureau of Immigration of January 1, 1930, reading as follows: "Where civil aircraft are operated upon a fixed schedule filed at the airport of entry for aliens, the airmen in charge of each aircraft, or a responsible officer of the company, in lieu of submitting crew lists, upon each arrival, may submit upon first arrival a list of all airmen employed thereon. From said list the immigrant inspector shall prepare a card record for each airman on a form to be prescribed by the Commissioner General of Immigration. When such airmen leave the employ of a company, a report as to date and place, and manner of discontinuing employment shall be made by the owner, agent, or airman in charge of the civil aircraft on which previously employed, and any additional airman employed shall be promptly reported."

Mr. Byrne to Inspector Phillips: Q. Did I understand you to say there was no alien manifest whatever made out for this trip, or was there, I don't recall your answer?

A. I said that there was an alien manifest made out for this trip containing only one name, that of Jorge Ponce.

Q. When did you last see that alien manifest, Mr. Phillips?

A. June 25, 1928.

Mr. Byrne to Inspector Ellefson: Mr. Inspector, we would like to have that alien manifest brought here for examination and use in this case.

Mr. Ellefson: Inasmuch as the name of Anthony Volpe appears on the citizen manifest, I don't see how the alien manifest would have any bearing on this case. For that reason, your request is denied.

Mr. Byrne to Inspector Phillips: Q. Was the alien manifest for this gentleman, the Cuban Consul, verified or signed by you?

A. It was.

Q. What did you do in the way of verifying or signing it?

A. There is a space on the reverse side of the manifest for the examining inspector's signature.

Q. Is there any verification written or printed over the signature of the inspector on the blank?

A. There is some printed matter over the signature, 146 but I do not remember the wording.

Q When did you place your signature on that alien manifest?

A. Before sending it in to the district headquarters at Jacksonville.

Q. That would be on or about June 24, 1928?

A. Right.

Q. If I understand you correctly, you did sign the alien manifest for this trip, but you didn't sign the citizen manifest for the trip?

A. A signature on the citizen manifest is not necessary.

Q. Have you ever signed a citizen manifest at any time during your service?

A. Where there is a large number of passengers arriving, and several manifests involved, I usually initial my manifest for future identification purposes, but where there is a small boat arriving or any conveyance having only a few passengers, I do not deem it necessary to initial or sign the manifest.

Q. Well, if you returned to duty, say next Monday, and an airplane comes in with seven passengers, six of whom enter as citizens, would you, or would you not sign the citizen manifest?

A. That would be optional with me.

Q. Regarding the form of the citizen manifest, do you require any signature or verification by the maker of it?

A. None whatever. In fact, a transportation company does not have to submit a citizen list, but, of course, to expedite the landing of their passengers, they all usually do.

Mr. Byrne: I now offer in evidence, paragraphs one and two of sub-division D of rule 5 of the Immigration Laws and Rules of January 1, 1930, and ask that it be copied in:

"Upon arrival at an airport of entry for aliens it shall be the duty of the airman in charge of a civil aircraft engaged in foreign air commerce to deliver to the immigration officer the passenger and crew lists hereinafter provided for.

The lists of arriving passengers and airmen shall be typewritten or printed upon modified forms prescribed by the Commissioner General of Immigration. Such lists shall be prepared before departure of the aircraft from a foreign country or an insular possession of the United States and shall contain the names of all passengers and airmen, together with other data called for thereon whether passengers have been preexamined by United States immigration officers, or otherwise A separation shall be made on such lists of names of those who have and those who have not been preexamined. These lists shall be sworn to by the airmen in charge before the immigration officer to whom delivered. All passengers so brought shall be regularly inspected upon arrival, and manifested if found appropriate. Forms 548 shall be used in recording manifest data."

Q. Is this airplane company still bringing passengers from Cuba to Key West?

A. No.

Q. When did they stop bringing passengers?

A. The latter part of 1928 or the early part of 1929, to the best of my knowledge.

Q. Is the airplane company still in business, do you know?

147 A. Yes.

Q Do they bring passengers to some other port in the South, instead of Key West?

A. Bring passengers to Miami, Florida.

Q. Were these parties sworn when they entered at Key West, Mr. Phillips, referring to the members of the party on the aircraft on June 24, 1928?

A. If there was any doubt as to their citizenship, they were.

Q. Well, I mean to ask you whether or not you swore them on this occasion?

A. I may have, but I am not positive whether I did or not on this occasion.

Q. Referring to Government Exhibit "J," under the head-

ing "Manifests" appears the number 1004, what does that mean?

A. That means from July 1, 1927, until June 24, 1928, inclusive, there had been 1004 alien manifest presented, at the port of Key West, Florida, by various yachts and transportation companies.

Q. Calling your attention to the first figure in line headed "Manifest" # 71 on June 18, 1928, what does that mean?

A. This Exhibit "J" has been laying under something which was mucilage or some adhesive matter and one number, that is the number in front of the "7," has been torn away from this sheet. That "71" is only part of the manifest number, that should be "971." On second examination of the paper, I am inclined to believe that parts of the sheet are eaten away by roaches or wood termites.

Mr. Byrne: I ask your record show that the paper is marked or eaten or corroded as Mr. Phillips has mentioned, in approximately a dozen different places.

Mr. Byrne to Inspector Phillips: Q. Is this writing under date of June 24, in your handwriting Mr. Phillips?

A. It is.

Q. Now referring to Exhibit "I," Mr. Albury certifies that "I certify that this statement is correct—Claude Albury, Inspector in Charge." He wasn't present at the landing field when the party landed, was he?

A. No.

Q. So that his certification of the paper, Exhibit "I," is doubtless based upon the information that he got from you or your records, is that correct?

A. The information contained in Exhibit "I" is taken from both the citizen and alien manifest.

Q. So then Mr. Albury had no personal knowledge of the entry of the parties on this aircraft?

A. Yes, Mr. Albury had knowledge of the entry of these passengers, inasmuch as he assigned me to duty, to examine these passengers.

Q. Well, he didn't see them himself or talk to them himself, did he?

A. No.

Mr. Byrne to Mr. Devine: Q. Have you any questions Mr. Devine?

A. No.

148 Mr. Byrne: Well, I guess that's all for Mr. Phillips; we have one witness.

Mr. Phillips excused:

WITNESS CALLED AND DULY SWORN:

Inspector Ellefson to Witness: Q. What is your name?
A. Dr. Septimio di Cosola.
Q. Of what country are you a citizen?
A. United States.
Q. By birth or naturalization?
A. By birth.
Q. What is your address?
A. 947 West Taylor Street, Chicago, Illinois.
Q. Do you know any of the circumstances surrounding the entry of Mr. Anthony Volpe at Key West, Florida, June 24, 1928?
A. No, sir.
Inspector to Mr. Byrne: Q. Do you wish to question the witness?
A. Yes.
Mr. Byrne: Mr. Inspector, I want it understood and set forth in the record that we are proceeding with the Doctor as our witness under protest, my understanding of the situation being that we are required to present anything we have, now, or the Department will claim that we do not care to present anything, so we are presenting, under protest, as we have proceeded heretofore.
Mr. Byrne to Witness: Q. Doctor, you testified previously for Mr Volpe at this hearing?
A. Yes, sir.
Q. I think that was about a month ago?
A. Yes, sir.
Q. Have you talked with anybody about the case since then?
A. Well, you mean just personal discussion. About two weeks after I had been here I know it was Wednesday and I know I was alone. I have another brother who is a dentist and we take every other Wednesday off see, and that Wednesday I had been working alone, that was my Wednesday on, and I was working on a patient, and my door is slightly open as I usually keep it to watch the patients, just watch the reception room, two fellows presented themselves and when I seen the two fellows I thought they were police detectives.
Q. What did they say?
A. Nothing, just walked to the door and come in.
Q. What did they say?
A. Well, I turned around to them and said "Well, what can I do for"
Q. And what did they say?

A. They said "Are you Dr. Septimio di Cosola." I said "Yes sir." They said "are you the party who testified in the Volpe case," I says "Yes, Sir." He says "Well, we are investigators." Well, the thing struck me kind of peculiar
149 and I said "Just a minute, I will be with you." I took care of my patient and when I got through came in the office and they asked me a few things. We got to talking about things, they wanted to know if I knew him, and I said I did, and that he had lived upstairs and I was occupying the flat that he had been living in, at one time, and many other questions, naturally came on the side of discussion regarding Anthony Volpe, and they said "Where was his business," I told them if they would come to the window I would show him where one of the places of his business was, I could see it from my window which was across the street. Well, they said "Would you mind showing us the other places of business, you say he was in business, or worked for. "We got downstairs and got in one of these Buicks and they take me to Halsted and Forquer first, and I showed them where Bella Napoli Cafe was, and I told them he had been working there, I knew he had worked there, and he also had a little place upstairs of the Bella Napoli, little coffee house is what they called it, and they said "Where else did he work for" and they drove me to Wood and Madison, they drove down Madison to Wood and I showed them the place, which is now being occupied by some mattress concern. I noticed that now, I never paid attention to it before. Then they drove me back and asked them if they wanted to have dinner, got off at Blue Island and Taylor, at my office and soon I forgot about it, went up to dinner and come back to work. Well, about a week or so after I met the ex-alderman, Albert Prignano. I told him about it, about the parties coming up to see me.

Q. Did you ever see these parties after that?

A. No, sir.

Q. Did they say whether they were from the Immigration Office?

A. No.

Q. Did they show you any badges?

A. No, I don't remember seeing.

Q. Did they show you any credentials whatever?

A. Well, when I went to the door they may have presented something.

Q. Do you know what their names were?

A. No, sir.

Q. Did they give you any names?

A. No, sir.
Q. Have you ever seen either of them since?
A. No, I never thought of it myself, after that.
Q. Did they talk to anyone at the places you took them to?
A. No, just kept in the car.
Q. Did anybody else call and interview you about the testimony?
A. Not really interview.
Q. Did anyone call and ask you about your testimony for Volpe?
A. No, just talked of the matters.
Q. Did anyone, claiming to be an investigator talk to you about it?
A. Some party come in and usually we talk about it in that district.
Q. Was he an investigator?
A. No, that was really the only coincidence.
Mr. Byrne to Mr. Devine: Q. Have you any questions Mr. Devine?
A. No.
150 Mr. Byrne to Inspector: Q. Mr. Inspector, I would like to inquire if the alleged investigators were sent from this office?
A. Not to my knowledge.
Mr. Byrne to Mr. Healy: Q. Do you know anything about it Mr. Healy?
A. No.
Mr. Byrne: I guess that's all for the Doctor.
Mr. Byrne to Dr. Di Cosola: A. Your father was a banker in Chicago for many years?
A. Yes, sir.
Q. He is now dead?
A. Yes, sir.
Q. And you have a number of brothers?
A. Seven.
Q. Engaged in business in Chicago?
A. Yes, sir, I have six brothers. One of my brothers died in Service, 1918; two brothers are dentists; two brothers are druggists; one foreign exchange department.
Mr. Ellefson to Alien: Q. Have you any further evidence or witnesses to present?
Mr. Byrne: A. We don't have, at this time, Mr. Devine and I desire to apply to the Department of Labor for subpoenas to issue as to some witnesses whose names have been mentioned in the testimony, and I requested inspection of the

record last Friday with a view of expediting written application, but the opportunity to inspect the record was refused me, at that time, so that we will want a day or two to present that application for subpoenas to issue from this department for the witnesses.

Mr. Ellefson to Mr. Bryne: Q. Who are the people?

Mr. Devine: Mr. Harry Ditchburne, Assistant States Attorney.

Mr. Ellefson: So far as the Government is concerned, we are not interested in Mr. Ditchburne's testimony. However, if you wish to present him as a witness, it is within your province to do so.

Mr. Ellefson to Mr. Devine: Q. In what manner do you wish to have Mr. Ditchburne testify?

A. Mr. Ditchburne was the attorney in the matter involved in the Federal Court, as evidenced in your Warrant, with reference to this hearing.

Q. That is, when your client Mr. Volpe was sentenced to thirty days imprisonment, Mr. Ditchburne was the United States Attorney prosecuting the case?

A. No, Mr. Ditchburne was Mr. Volpe's attorney.

Q. That is, Mr. Ditchburne's testimony then, would tend to assail the conviction of Mr. Volpe?

A. Well, he knew the situation there, and he knew that as far as Mr. Volpe was concerned, he was innocent.

151 Q. In other words, his testimony would be wholly upon the innocence or guilt of Mr. Volpe in the case tried before Judge Cliffe in the United States District Court in the year 1925?

A. Yes.

Inspector: Your request to have Mr. Ditchburne testify for the purpose stated is denied.

Mr. Byrne: I would like to have four or five days to prepare an application to the Bureau of Immigration for the issuance of subpoenas for witnesses other than Mr. Ditchburne, the Ditchburne matter having been disposed of by the Inspector's ruling.

Inspector: No subpoenas will be issued by this office requesting witnesses to appear, unless they are desired by the Government, and if you desire additional witnesses, it is entirely a matter for yourself.

Mr. Byrne: Well, I desire to have this Inspector in Charge, Mr. Albury brought here for examination, and Inspector Cabiness, whom it seems transported some of these records from Jacksonville to Key West, the records themselves being partly

obliterated, incomplete, not kept in accordance with law and not kept in accordance with the regulations of the Department, and I desire to examine the persons who, at different times, have had custody of these papers, and had something to do with their preparation.

Inspector: Inasmuch as Inspector in Charge, Claude Albury, at Key West, Florida, and Inspector Caviness of the Jacksonville Florida district, did not have anything to do with the actual inspection or admitting of Mr. Volpe, I shall have to deny your request, with respect to their appearing here as witnesses for the Government.

Inspector to Mr. Byrne: Q. Have you made any effort to have Mr. Claude Albury, Inspector in Charge at Key West, Florida, or Inspector Caviness appear here to testify?

A. No, I didn't know anything about their existence until your witness mentioned them here the other day.

Inspector to Alien: Q. Have you any further evidence or witnesses you wish to present?

Mr. Devine: We would like to have this continued until Wednesday morning, 10:30 A. M. in order to present witnesses.

Inspector: What witnesses do you want to present?

Mr. Devine: Well, this request is made in good faith. Well, we had them here a day or two ago, when the records that we requested did not arrive on time.

Mr. Healy: I suggest that a subpoena issue for Mr. Ditchburne.

Inspector to Mr. Devine: Q. Do you really want Mr. Ditchburns here to testify?

A. I made a request but I was overruled.

Inspector: If it is decided to accede to your request to subpoena Mr. Ditchburne, he will be requested to appear here here at 10:30 A. M. Wednesday morning, April 8, 1931.

Inspector to Attorneys: Q. Is that satisfactory?

A. Yes.

152 Q. If the hearing is continued to 10:30 A. M. April 8, 1931, will you desire to examine or question Inspector Phillips?

Mr. Byrne: I don't think so.

Q. Do you waive his presence here at that time?

A. Yes.

Mr. Devine: No, we should like to have him here just for identification purposes.

Inspector to Mr. Devine: Q. Do you want Inspector Phillips to identify other members of the party?

A. Well, I want others to identify him.

Q. That is, as to whether or not he was the Inspector who admitted the party arriving on the airplane General Machado June 24, 1928?

A. Yes.

Attest:

D. E. ELLEFSON

D. E. ELLEFSON

Immigrant Inspector.

Hearing Continued to 10:30 A. M.—Wednesday, April 8, 1931.

153 Continued Reopened Hearing Conducted by Inspector D. E. Ellefson at the U. S. Immigration Office, 1343 Transportation Building, 608 S. Dearborn Street, Chicagofi Illinois. April 8, 1931, 10:30 A. M.

Present:

Antonio or Anthony or Tony Volpe alias "Mops" Volpe Alias Albert Lopez, Alien.
John Elliott Byrne, Attorney.
Miles J. Devine, Attorney.
Assistant U. S. Attorney, T. D. Healy.
Helen C. Rolleston, Stenographer.
D. E. Ellefson, Inspector.

Alien Advised Previous Oath Taken Is Still Binding:

154 Inspector to Alien: Q. Are you the one and same Antonio or Anthony or Tony Volpe alias "Mops" Volpe alias Albert Lopez whose hearing was continued to this date?

A. Yes.

Q. Have you any further evidence or witnesses you wish to present at this time?

A. I will let my attorney answer that.

Mr. Byrne: I understand Mr. Devine expected to examine Mr. Ditchburne.

Mr. Devine: I think, Mr. Inspector, that in view of the fact that newspapers have produced various articles during the last ten ten days in reference to the hearing of this particular case, well, I feel satisfied that those interviews to the newspapers did not emanate from this office. I have my own idea where it came from. I do know my associate Mr. John Elliott Byrne did not interview any newspapers. I take it for granted, what I saw in the newspapers yesterday and this morning, that any witness that would come in from the State's

Attorneys Office, or any other office would not be inclined to testify free and voluntary, after what was said in the press. I am not in favor of such propaganda. I repeat again, this is not a criticism to the Immigration Department, somebody is responsible and somebody ought to be held responsible for giving out interviews that are not true. For instance, yesterday, I have this clipping in my pocket, here they stated a continuance was granted over the protest of Todd Healy. We know it is not true, because he was responsible for getting a continuance to bring in Mr. Ditchbrne, and that Mr. John Elliott Byrne repeated, Mr. Volpe said different things connected with those statements with the newspapers, and I repeat again, I feel positive he did not talk with the newspapers, and I realize in view of the fact that as one of the articles say "Volpe may ask Legal Help from Swanson Aid," that is in this morning's Examiner, and yesterday on the same it states "Volpe Asks Aid of Prosecutor." I have an idea when that reaches the attention of the State's Attorney, for whom Mr. Ditchburne is legally employed, he will interview him as to what he will say, in this particular case. It is not fair to Mr. Volpe, it is not fair to anyone, and another thing that goes in there, it says he is a gunman. There is no evidence introduced here that he ever had a gun in his hand, and I feel certain it will be very hard for anyone to come in, who can say he had a gun in his hand. It will not be fair when it reaches Washington, as they are human in Washington as well as they are supposed to be in Chicago. I haven't said anything before, I didn't bring it up Monday, in reference to Mr. Volpe talking about Mr. Healy shaking his head. I will say now, and I was inclined to open up then, I didn't want to create any disturbance, I say Mr. Healy shake his head five or six times.

Inspector to Mr. Devine: Q. Am I to understand then, that you desire to have Assistant States Attorney Harry Ditchburne testify, providing his testimony will not be given to the newspapers.

A. I don't see how we can have any assurance of that, because every time we have a hearing, it appears in the press.

Mr. Ellefson: I can assure you, this office is not giving any information to the press to the effect that Mr. Volpe
155 is a gunman, in any way, shape or form, or that he is connected with any of the so called "gangs," or in fact, even that he is a minor underworld character, or any way you care to put it.

Mr. Devine: In this article yesterday and today, there is

anything of that kind, and it would have a tendency to intimidate a States Attorney, or anyone else to come in and testify. As far as I am concerned, I don't know how Mr. Byrne feels about it. I don't think I am in position to ask any questions to embarrass any witnesses.

Mr. Ellefson: Neither the Department of Labor, nor the Bureau of Immigration, challenge Mr. Volpe's moral character, and the matter of moral character is not an issue.

Mr. Devine: I feel, I don't know about the senior counsel in this case, I feel as though Mr. Ditchburne, if left to himself and out of the newspapers, he would come in and testify for Mr. Volpe, in his behalf. If he did, he would have to say there is little or no case against Mr. Volpe, and I was there during the whole trial, and the last one to remain in the case.

Mr. Ellefson: I can assure you, no publicity will be given the appearance or testimony given by anyone in behalf of Mr. Volpe, by this office.

Q. Have you any further witnesses you wish to present?

Mr. Byrne: Well, I will abide by Mr. Devine's judgment with reference to the examination of Mr. Volpe, that part of it. There have been things which I want to say for the record. However, that statement attributed to me in the newspapers and clippings Mr. Devine produced, are unfounded, in fact, as I didn't mention Mr. Ditchburne's name to any newspaper man, said knew nothing about the matter that he was to be called as witness. One newspaper man met me on the street and asked me what had happened, and I said "nothing of importance" and he said "alright" and passed on.

Mr. Ellefson: Whatever publicity has appeared in the newspapers, of course, has absolutely no official connection with this case, and of course, the publicity will not have any bearing on the outcome of the case, so far as the Department of Labor or the Secretary of Labor is concerned.

Mr. Byrne: Yes, but Mr. Devine's point is that newspaper publicity tends to embarrass witnesses, particularly those like Mr. Ditchburne, who now holds an official position in this community.

Mr. Ellefson: So far as I am concerned, if you wish to present Mr. Ditchburne or any other witness, his appearance, testimony, will not be given one iota of publicity.

Mr. Byrne: I have nothing to add to what Mr. Devine has said, but of course it is understood that we have the same position today that we had the other day when we requested

that the Department of Labor produce, for our examination, the two Immigration Inspectors from Florida, and also Mr. Morgan, whose name has been mentioned many times, and whose conversations have been repeated by hearsay, by Inspector Phillips in his testimony.

156 Mr. Ellefson: Inasmuch as the persons referred to by you did not take any official part in the actual examination and admission of Mr. Volpe into the United States at Key West, Florida, June 24, 1928, I am of the opinion that their testimony is not necessary, and by them not appearing here, it will in no way jeopardize Mr. Volpe's remaining in the United States. I, therefore, must refuse to have those witnesses subpoenaed. However, on the other hand, would you be willing to defray the expenses incident to their appearance at this hearing, or in future continued hearing.

Mr. Byrne: No, we are unable to do so. Mr. Volpe is a man of very limited means. His entire possession consists of a home in which he and his family live, which is worth about $12,000, which is encumbered by a mortgage of $5,000. However, I feel that the testimony of these witnesses is an integral and necessary part of the Government's case, and that the witnesses should be produced as a part of the government's case at government expense for cross examination by the defense.

Mr. Ellefson: It is not deemed necessary to call those people mentioned by you as witnesses for the government or for cross examination by the defense.

MR. DITCHBURNE called as witness and duly sworn:

Inspector to Witness: Q. What is your name?

A. Harry S. Ditchburne.

Q. Of what country are you a citizen?

A. United States.

Q. What is your occupation?

A. Lawyer, present Assistant State's Attorney, Cook County, Illinois.

Q. Do you know any of the circumstances surrounding the mission of Anthony or Antonio or Tony Volpe, alias "Mops" Volpe, alias Albert Lopez into the United States through the port of Key West, Florida, June 24, 1928?

A. No.

Q. Do you know anything about his conviction in the Fed-

eral Court in the Fall of 1925, regarding a counterfeiting charge?

A. Well, I represented him in a trial, which I presume is the same matter, and at that trial the jury disagreed, and subsequent to that time, he retained other counsel.

Q. Do you know anything about his conviction?

A. Only what I have read and what I have been told.

Inspector to Attorneys: Q. Mr. Counsels, do you wish to question the witness?

A. Yes.

Mr. Devine to Witness: Q. Mr. Ditchburne, you served as attorney for Mr. Volpe in the case the Inspector asked you about in the Federal Court, for several weeks, did you not?

A. It took quite a while, I don't remember how long the case took.

157 Q. And originally there was twenty-two or twenty-three defendants?

A. There were a large number of defendants.

Q. And practically as many lawyers as defendants?

A. Yes, substantially true, some lawyer may have represented two.

Q. The case proceeded in all those defendants, we speak of, continually in the case?

A. They all pleaded guilty, unless there were some who were dismissed. However, most pleaded guilty leaving two in the case, one Mr. Volpe, whom I represented and the other was, Mr. Devine can tell you his name better than I can.

Mr. Devine: Santos Jamalli.

A. (continued:) And they remained in the case and went to the jury and Mr. Devine represented Jamalli and I represented Volpe. The jury disagreed after being out a long time, about three days.

Q. Now, before the jury went out on the case, did you have an opportunity to have Judge Cliffe or someone to enter a plea and receive a very small sentence for your client Mr. Volpe?

A. I believe we did have such an opportunity.

Q. And did you consider, as the attorney of Mr. Volpe, in that case, that there was no serious evidence against your client?

A. Well, we urged that there was not.

Q. Well, you were of that impression, as his lawyer?

A. Yes, I was.

Q. Mr. Volpe was on the stand and freely told his story?

A. As far as I know.

Q. Do you remember that anyone mentioned his name for the several weeks that the case was going on, except one Steve Brodie who was connected with the Municipal Court?

A. I wouldn't recall sufficiently Mr. Devine, to say that I remember all of that. I remember a witness by the name of Brodie, so far as I remember now, but I would stand to be corrected. I don't remember the case so well, I couldn't even tell you the year it was it now. It was a good many years ago, now.

Q. You recall that no one charged or testified—

Mr. Ellefson: Mr. Devine, the circumstances surrounding the conviction, cannot properly be received or considered by me, so that if you will confine your examination of Mr. Ditchburne to other lines, you may continue.

Mr. Devine: I don't see how I can go into this matter, in view of the fact it has been so long, to take this man and refresh his recollection.

Mr. Devine to Mr. Ditchburne: Q. You knew Mr. Volpe, who has the hearing now before the Immigration Department, before that?

A. A matter of couple of years.

Q. You knew that he was employed over on the West Side before that, didn't you?

A. I don't think I knew him to be employed, I understood he had a restaurant there, at one time.

Q. You never visited the restaurant there, "Diamond "Diamond Joe's"?

A. Yes, it was the Bella Napoli.

158 Q. Do you recall, at that time, that Mr. Volpe was manager, at that time?

A. I don't think he was when I visited there, but I understood he had been or was, later, I don't remember which.

Mr. Ditchburne Excused.

Inspector to Alien: Q. Have you any further evidence or witnesses you wish to present?

Mr. Byrne: None other than those previously requested.

Inspector to Mr. Byrne: Q. You mean the two inspectors in Florida and Mr. Morgan connected with the Pan-American Airways Incorporated?

Mr. Devine: I think Mr. Inspector that one gentleman particularly there, who is not a government man, was connected with the government, and great stress was placed on his testimony by Mr. Phillips, in reference to the "Capone gang" coming over on an airplane. Now, we doubt, Mr. Morgan, if he was here, would say anything of the kind, and I contend

it is important because it is part of the testimony given by Mr. Phillips in this case, and testimony that was sought to be rather severe with Mr. Volpe, and those reputable men who accompanied him. First place, it ought not to be competent for him to say what he said about somebody who was coming in, he was prompted to tell, it was hearsay, and there is no corroboration of that story, and Mr. Morgan could corroborate or deny the statement, if he were here.

Mr. Ellefson: The government will not request or subpoena Mr. Morgan because he had no authority to authorize the admission of Mr. Volpe, and had nothing whatever to do with the examination and admission of Mr. Volpe into the United States.

Mr. Devine: Another thing I notice, Mr. Inspector, there, that I hesitated very much to say, very much, in reference to it, because it speaks for itself from a legal standpoint, and from a legal standpoint it would not be admissible in any court in the United States, and that is the manifest. The manifest was produced here and it was supposed to be in red ink. I simply say that to identify it, in which the name of Mr. Phillips was later put on before his visit to Chicago to testify in this case, there has not been anyone connected with this case to say, with reference to where the typewritten matter, where it was put on, except that it could be said, from hearsay, it was put on before it came into the hands of Mr. Phillips, but there is nothing in handwriting, of Mr. Phillips, to show that he was a citizen of the United States, except something that was typewritten by someone else, to say he was a United States citizen.

Mr. Ellefson: That point, as well as all others, will be finally decided by the Secretary of Labor.

159 Inspector to Alien: Q. Have you any further evidence or witnesses you wish to present to show cause why you should not be deported?

A. Let my lawyer answer that.

Mr. Byrne: No, we have none, at this time.

Inspector to Alien: Q. Have you thoroughly understood the nature of these proceedings?

A. I do.

Q. Are you satisfied with the treatment accorded you by this Service?

A. I will let my attorney answer that question.

Q. Do you think you have been given a fair and impartial hearing?

A. I will let my attorney answer that.

Inspector to Attorneys: Q. Mr. Counsels, are you satisfied with the treatment accorded you and your client during the progress of this hearing?

Mr. Byrne: We feel the presiding Inspector has been, personally, very courteous and desirous of being fair. However, we feel that the hearing has been unfair in respect to the decisions of several legal questions involving the rights of our client, and with respect to those questions, our views differ from those of the Inspector and the Department of Labor, as we understand it. We also feel that the bond exacted of Mr. Volpe has been excessive, as it is a $10,000 bond. The proceedings have been protracted by the actions of the government, and never in my experience, of some 20 years in immigration matters, and Mr. Devine said the same thing to me, has such a bond been required in an immigration case.

Q. Have you or Mr. Devine any further evidence or witnesses you wish to present other than those already stated by you in Mr. Volpe's behalf?

A. Nothing further Inspector.

Inspector Ellefson: If not, the hearing will be closed.

Q. Mr. Counsels, do you wish to submit a brief?

A. Yes.

Inspector: You will be furnished with a transcript of the hearing and be allowed sufficient time within which to submit your argument.

To Alien: You are advised that under the Act of March 4, 1921, you will, if ordered deported, and thereafter enter or attempt to enter the United States, be guitly of a felony, and upon conviction thereof shall be liable to imprisonment for not more than two years, or a fine of not more than $1000, or by both such fine and imprisonment.

Q. Do you understand?

A. Yes.

Description of Alien: Height 5′ 7″; weight 165; eyes brown; hair dark brown; face oval; nose straight; mouth regular; distinctive marks—pock marked, no deformity or disease.

160 Government Exhibits "H", "I" and "J" Attached.

Hearing Closed Subject to Be Reopened at the Call of the Government for the Introduction of Additional Evidence, if Necessary.

Attest:

D. E. Ellefson

D. E. Ellefson

Immigrant Inspector.

Meachem Field

Record on this blank United States citizens and citizens of insular possessions of the United States arriving at a port of continental United States from a foreign port of a port of the insural possessions of the United States, and such citizens arriving at a port of said insular possessions from a foreign port, a port of continental United States, or a port of another insular possession.

List of United States Citizens
(For the Immigration Authorities)

Aeroplane General Machado NC-55 Departing from Havana, Cuba, June 24th, 1928 Arriving at Port Meachan Field, Key West, June 24, 1928

No. on list	Family Name	Given Name	Age Yrs.	Mo.	Sex	M. or S.	If native of United States Insular Possession or if Native of United States, give date and place of birth (city or town and State)
1.	Serritella	Daniel A.	30		M	M	Aug. 29, 1898—Chicago, Ill.
2.	Prignano	Anthony J.	36		M	M	Aug. 23, 1891—Chicago, Ill.
3.	Guzik	Jacob	42		M	M	Feb. 14, 1886—Chicago, Ill.
4.	Volpe	Anthony	36		M	M	Argentine (in red ink)
5.	Pacelli	William V.	35		M	M	Feb. 16, 1893—Chicago, Ill.
6.	Fischetti	Rocco	27		M	S	March 24, 1901—Brooklyn, N. Y.

If naturalized, give name and location of Court which issued Naturalization Papers, and date of Papers	Address in United States
1.	1142 South Michigan Blvd., Chicago, Ill.
2.	722 Bunker St., Chicago, Illinois
3.	7240 Luella Ave., Chicago, Ill.
4. Circuit Court of Cook County, Chicago, Illinois.....	1500 Menard Ave., Chicago, Ill.
5.	771 Dekoven St., Chicago, Ill.
6.	424 Second Street, Brooklyn, N. Y.

I hereby certify that the above-named passengers were examined and admitted by me as Citizens of the United States on June 24th, 1928.

(signed) EMIT F. PHILLIPS
Immigrant Inspector

Subscribed and sworn to before me this 21st day of March, 1931, at Key West, Florida.

(signed) HAROLD PINDER,
Notary Public—Notary Public, State of Florida at Large.

My commission expires Oct. 10, 1934. (in pencil) 6-0-0

162 Important Notice.

1. Great care should be taken not to place on this list the name of any passenger who was not born in the United States or who has not taken out final naturalization papers.
2. Where one or more members of a family are aliens, the names of all such members should be recorded upon the alien manifest. Suitable notation may be made upon such manifest opposite the names of those members who claim citizenship.
3. Failure to observe the terms of this notice may result in delay to passengers at the port of arrival.
4. List on this form only United States citizens or citizens of an insular possession of the United States.

163 GOVERNMENT EXHIBIT "I".

Bill and Notice for Head Tax—Act Feb. 5, 1917
No. 173282

The amount of this bill must be paid to Collector of Customs within 24 hours after arrival of vessel—Act Aug. 3, 1882

Port Key West, Fla. June 25, 1928.

Pan-American Airways Inc. } To the United States, Dr.
Address: Key West, Fla. } On Account of Head Tax

on alien passengers arrived on the American Airplane "Gen. Machado" on June 24, 1928.

Classification of Passengers	First Class	Second Class	Sterage	Total	Head Tax Rate of $8 Per Head
Aliens held for special inquiry					
Persons making unsupported claim to U. S. Citizenship					
Children making unsupported claim to be under 16 years					
Residents of Canada, Cuba, or Mexico claiming to come to U. S. for temporary stay					
Aliens in transit and tourists					
Total Special Deposits					
Aliens Subject to Head Tax					
Alien Seamen Subject to Head Tax					
Total Amount Due					
Citizen of United States and Insular possessions	6		0	6	
Diplomatic officials, etc.	1		0	1	
Tourists exempt from tax					
Children under 16 years accompanied by parents					
Total passengers	7		0	7	

Paid to Cashier of Customs
.....Payor

I certify that this statement is correct

(signed) Claude Albury
Claude Albury
Inspector in Charge—of Immigration

164 No. 173282 Head Tax Bill—Pan-American Airways, Inc.
Airplane "Gen. Machado" arriving at the port of Key West, Fla. June 24, 1928
Total nonim. aliens 1. U.S.C. 6. Grand Total 7 Manifest 1004 EFP

Exemption no tax of deposits Diplomatic, Ex-KA

Jorge R. Ponce

No quota.

K

173282

EFP

GOVERNMENT EXHIBIT "J".

Report of Arrivals Meacham Field

Port of Key West — Month of June 1928

Steamship	Manifests	0	Aliens Male	Fem	Und	Over	Cab	Str	Total	U. S. Citizens Male	Fem	Und	Over	Cab	Str	Total
Gen. Machado	18	971	3		1	3	4	0	4	1	0	0	1	1	0	1
N-3314	19	....	..	..	..	..	..	..	..	2	0	0	2	2	0	2
Gen. Machado	20	....	..	..	..	..	..	..	..	2	0	0	2	2	0	2
N-3314	21	982	1	0	0	1	1	0	1	1	1	0	2	2	0	2
Gen. Machado	22	990	1	1	0	2	2	0	2	2	0	0	2	2	0	2
N-3314	23	1003	0	1	0	1	1	0	1	1	0	0	1	1	0	1
Gen. Machado	24	1004	1	0	0	1	1	0	1	6	0	0	6	6	0	6
TOTAL			6	3	1	8	9	0	9	15	1	0	16	16	0	16
N-3314	25	1013	1	0	0	1	1	0	1	1	0	0	1	1	0	1
Gen. Machado	29	1023	1	0	0	1	1	0	1	..	..	0	0	..	..	..
N-3314	29	1029	1	0	0	1	1	0	1	..	..	..	..	..	..	..
Gen. Machado	30	*	..	..	..	..	..	..	..	1	0	0	1	1	0	1
N-3314 July	1	1	1	0	0	1	1	0	1	3	2	0	5	5	0	5
Total			4	0	0	4	4	0	4	5	2	0	7	7	0	7

166 U. S. Department of Labor

Immigration Service

Summary:

I, D. E. Ellefson, the duly authorized examining officer do find the following facts:

That Antonio or Anthony or Tony Volpe, alias "Mops" Volpe alias Albert Lopez, is an alien, a native of the Argentine, having been born in Santa Fe, Argentine, October 6, 1890, of Italian parentage, and a citizen of Italy.

He first entered the United States through the port of New York, New York, being admitted for permanent residence, March 31, 1906, as shown in Government Exhibit "D". He continued to reside in the United States until June, 1928, when he went to Havana, Cuba, reamining there a few days.

On March 27, 1920, he was granted United States citizenship by Judge David of the Superior Court, Cook County, Illinois. The following Saturday, April 3, 1920, Judge David revoked his former order admitting him to United States citizenship and continued his petition for further hearing. On April 24, 1924, Volpe asked that his petition be dismissed, whereupon the court so ordered.

On October 7, 1925, he pleaded guilty to having violated Sections 148, 150, 191, 219, and 37 of the Criminal Code and was sentenced to thirty days imprisonment in Lake County Jail, Waukegan, Illinois, by Judge Adam C. Cliffe in the United States District Court, Chicago, Illinois.

He last entered the United States at Key West, Florida, June 24, 1928, on the aeroplane General Machado NC-55, as shown in Government Exhibit "G".

His wife and three children, all native born citizens of the United States, reside with him at 1500 North Menard Avenue, Chicago, Illinois.

The charge contained in the Warrant for his Arrest, namely, that he was not in possession of an unexpired immigration visa at the time of his last entry into the United States, appears to be sustained. The charge contained in the Warrant for his arrest, that he has been convicted of, or admits the commission of a felony or other crime or misdemeanor involving moral turpitude, to wit: possessing and passing counterfeit United States War Savings Stamps prior to his entry, does not appear to be complete, insofar as the legal offense named therein is concerned, in consequence of which, the following charge has been placed against him

during the hearing, namely, that he has been convicted of a felony or other crime or misdemeanor involving moral turpitude, to wit: violation of section 148 of the Criminal Code, in that he possessed, made and forged government obligations with intent to defraud; violation of Section 150 of the Criminal Code, in that he possessed plates for the purpose of printing and making government obligations, and that he had in possession, counterfeit plates of a government
167 obligation; and violation of Section 219 of the Criminal Code, in that he counterfeited postage stamps of the United States; and violation of Section 37 of the Criminal Code, in that he conspired to commit all of the aforementioned offenses against the Currency and Coinage and Postal Laws of the United States prior to his entry into the United States, appears to be sustained.

The charge placed against him during the hearing, that he entered the United States by false and misleading statements, thereby entering without inspection, appears to be sustained.

Recommendation:

It is respectfully recommended that he be deported to Italy, the country of his citizenship, and the country from whence he came, at Government expense.

D. E. ELLEFSON
D. E. ELLEFSON
Immigrant Inspector.

I certify that the foregoing is a true and correct transcript of the record of reopened hearing in this case.

HELEN C. ROLLESTON
HELEN C. ROLLESTON
Stenographer.

168 EX. III.

Form No. 563
Immigration Service

Warrant—Deportation of Alien
United States of America
Department of Labor
Washington

311/1227
No. 55716/671

To: District Director of Immigration, Chicago, Illinois, Commissioner of Immigration, Ellis Island, N. Y. H., Or to any Officer or Employee of the United States Immigration Service.

Whereas, from proofs submitted to me Assistant to the Secretary, after due hearing before Immigrant Inspector D. E. Ellefson, held at Chicago, Illinois, I have become satisfied that the alien Antonio, or Anthony, or Tony Volpe, alias Mops Volpe, alias Albert Lopez, who landed at the port of Key West, Florida, ex Airplane "General Machado NC-55", on the 24th day of June, 1928, has been found in the United States in violation of the immigration act of February 5, 1917, to wit:

That he entered by means of false and misleading statements, thereby entering without inspection; and that he has been convicted of a felony, or other crime or misdemeanor involving moral turpitude prior to his entry into the United States, towit: Under Section 148 of the U. S. Criminal Code, of possessing, making, and forging Government obligations with intent to defraud; under Section 150 of the Criminal Code, of possessing plates for the purpose of printing and making Government obligations and of possessing counterfeit plates of a Government obligation; under Section 219 of the Criminal Code of counterfeiting postage stamps of the United States; under Section 37 of the Criminal Code, of conspiring to commit all the aforementioned offenses against the currency and coinage and postal laws of the United States, and may be deported in accordance herewith.

I, W. N. Smesler, Assistant to the Secretary of Labor, by virtue of the power and authority vested in me by the laws of the United States, do hereby command you to return the said alien to Italy, the country whence he came, at the expense of the appropriation "Expenses of Regulating

Immigration, 1931", including the expenses of an attendant, if necessary. Delivery of the alien and acceptance for deportation will serve to cancel the outstanding appearance bond. This supersedes warrant issued February 25, 1931.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 28th day of April, 1931.

(Sgnd.) W. N. SMELSER

(Seal) *Assistant to the Secretary of Labor.*

Copy

171 And, afterwards, to-wit, on the 8th day of July, 1931, there was filed in the office of the Clerk of said Court, the following Bill of Exceptions:

172 * * (Caption) * *

BILL OF EXCEPTIONS.

Be it remembered that heretofore, on to-wit, the 1st day of June, 1931, the same being one of the judicial days of the June A. D. 1931 term of said Court, this matter came on for hearing before the Honorable James H. Wilkerson, one of the judges of said Court, in his Court Room at the Federal Building in said County and State, whereupon the following testimony was taken and proceedings had in due form of law.

Present:

Messrs. Byrne & Devine, By John Eliott Byrne, Attorneys for Relator;

Mr. George E. Q. Johnson, United States District Attorney for said District and Division, by Mr. Dodd Healy, Assistant District Attorney, on behalf of the Government. Attorny for Respondent.

173 ROBERT P. CLARK, called as a witness on behalf of relator, having been first duly sworn, testified as follows:

Direct Examination by Mr. Byrne.

My name is Robert P. Clark. I am Assistant District Director with the Immigration Department at Chicago. I have been in the Immigration Service more than twenty-seven

years. I have been stationed in Chicago since November 10th last year. I do not know of a rule of the Department of Labor to refrain from taking any action in an immigration case while the matter is pending on habeas corpus proceedings. There is no such rule that I know of. I am not in a position to answer that. I don't know as there is a rule of that kind. I have never been in Washington. I don't know anything about the Washington office at all.

The Court: I don't think the witness is qualified, you will have to prove it by the secretary himself or by somebody who would know if he had any practice on the subject.

Mr. Byrne: Q. Do you not in all cases pending on Habeas Corpus, do you not receive copies of correspondence from the Secretary of Labor regarding the matter?

A. Just what do you mean?

Q. Well, I mean exactly what the question says.

A. Emanating from here or from Washington?

Q. Emanating from Washington?

A. There was nothing from Washington on the writ of Habeas Corpus.

Q. Well, I asked you if you received such copies as a general practice?

A. On writs of Habeas Corpus?

174 Q. Yes?

A. They emanate here.

Q. Well, I asked you as to anything emanating from Washington or from the Commissioner General's office or from the Secretary of Labor?

A. Only in answer to correspondence.

Mr. Healy: I don't think this is at all material. The point Mr. Byrne is trying to raise is in the record, this case was re-opened, if he wants a stipulation to that effect, all right, but the record speaks for itself. The record shows when the writ was served, when the hearing began and when it was re-opened.

Mr. Byrne: I am now showing that is in violation of the department's established practice.

The Court: Of what?

Mr. Healy: That is not the way to prove the practie.

The Court: What if it is.

Mr. Byrne: I want to show what special attention this case has received, bearing on the question of fairness.

The Witness: I recognize Petitioner's Exhibits 1 and 2,

being letters on the letterhead of the Department of Labor, as emanating from the Commissioner General's office.

(Said exhibits were thereupon introduced in evidence over objection of the United States Attorney and are in words and figures, as follows):

EXHIBIT 1.

U. S. Department of Labor
Bureau of Immigration
Washington

May 5, 1931.

Address reply to
Commissioner General of Immigration
And Refer to
No. 55675/116
W
175 Mr. John Elliott Byrne,
Attorney at Law,
722 First National Bank Bldg.,
Chicago, Illinois.

Dear Sir:

In reply to your letters of March 27th and April 20th, you are advised that as the case of John Bortulin, Jr., is pending in court, the department has pointed out that it is without jurisdiction and no action will therefore be taken at this time.

Respectfully,

HARRY E. HULL,
HARRY E. HULL,
Commissioner General.

EXHIBIT 2.

U. S. Department of Labor
Bureau of Immigration
Washington

May 31, 1929.

Address Reply to
Commissioner General of Immigration
And Refer to
No. 55617/165
W

Mr. John Elliott Byrne,
Attorney-at-Law,
1625 First National Bank Bldg.,
Chicago, Ill.

Dear Sir:

In response to your letter of May 16, 1929, addressed to the Secretary, requesting that Edward Wolf or Agid Wolf be granted permission to remain in the United States under the seventh proviso of the Act of February 5, 1917, you are informed that it is the policy of the Department not to give consideration to a case while the matter is pending in habeas corpus proceedings.

Respectfully,

HARRY E. HULL,
HARRY E. HULL,
Commissioner General.

176 I recall Inspector Phillips from Key West Florida, who testified at the hearing in the Immigration Office a few months ago.

Q. Now, you talked to him before he testified on that hearing, did you not?

A. I sent him to Mr. Healy.

Q. I beg your pardon?

A. I didn't talk to him.

Q. You didn't talk to him at all?

A. I sent him to Mr. Healy.

Q. Well, did you talk to him?

A. I talked to him about the case, yes, about one minute.

Mr. Byrne: Q. Mr. Clark, you knew before Phillips testified he was not to be allowed in the hearing room while Volpe identified himself, did you not?

Mr. Healy: That's objected to.

The Court: Overruled.

A. No, I didn't.

Mr. Byrne: Q. I will ask you whether it is not the policy and practice of the Department on all contested hearings to exclude witnesses from the hearing room until after they shall have testified?

A. He went in with your consent.

Mr. Healy: That's objected to, wait just a minute, Mr. Clark, it is not material what the policy or practice is, it is material what took place at the hearing. We have a record of the hearing if Mr. Byrne wants to show something done.

The Court: Did you ask to have the witneses excluded?

177 Mr. Byrne: They are always excluded, and witnesses are excluded by the universal practice in each case and in other cases that has ever been heard, and the witness Phillips, the prosecuting witness, and most important witness was placed in the hearing room and then Volpe was identified in Phillip's presence by Inspector Ellefson.

The Court: Was the question of identity material in this case?

Mr. Byrne: Yes.

The Court: Was it at issue?

Mr. Byrne: It was one of the most material issues, Phillips testified from memory. He said he saw this man for about five minutes three years ago in the summer of 1928, he talked about,—said about fifteen words to him. Now, he remembers distinctly that Volpe was there at that time and said fifteen words to him and the case is based entirely on that, although Phillips has since examined approximately fifty thousand,—

Mr. Healy: Ten thousand.

Mr. Byrne: —immigrants coming through that port in the same manner as Volpe did.

The Witness: It is not a rule of the Department of Labor to exclude witnesses in advance of their testimony in contested hearings, in all cases.

Q. In what cases do you exclude them?

A. Particularly all special inquiry cases.

Q. Any other?

A. Some hearings.

Q. Who decides whether they should be excluded or not?

A. That's up to the examining inspector.

178 Q. In what class of cases should he exclude them and what class of cases should he not exclude them?

A. That's according to what the case is.

Q. That's all you care to say about that?

The Court: Is there any rule on the subject?

A. Particularly,—we have some regulations,—

The Court: From which you determine whether or not you exclude witnesses.

A. There are lots of times we exclude them, there are lots of times we don't exclude them?

The Court: Well, when do you exclude them?

A. In ordinary public charge cases or ordinary cases of smuggling, sometimes we don't exclude in those cases.

Q. In smuggling cases?

A. In smuggling cases we have excluded them.

The Court: Well, is it your practice to exclude government officers when they have occasion to testify in a case?

A. I would not say yes or I would not say no, we do do it.

Q. It was done in this case.

The Court: That's if the defendant makes request of you, you sometimes exclude them.

A. We exclude them,—which was not done in this case.

Mr. Byrne: Is it not the custom then to exclude the witnesses for the defendant, is it not?

A. Not me.

Q. Mr. Byrne: Well, you know they were not excluded?

A. No, I don't, I just happened to be present that day that Mr. Phillips came in.

179 Q. I call your attention,—

The Court: Does the record show if there was an order made to exclude the witnesses?

Mr. Byrne: No.

Mr. Healy: No, the record doesn't show that.

Mr. Byrne: Q. They were in fact excluded and the record shows that the defendant's witnesses were not present during the presentation of the defendant's testimony the record shows that.

The Court: The record shows that?

Mr. Byrne: Yes.

Mr. Healy: We could not get them all in one room.

Mr. Byrne: The record shows that Inspector Phillips was present during the identification of Volpe by himself, just immediately before Inspector Phillips started to testify.

The Court: You say there is no practice, do you ever sit as an examining magistrate?

A. Not in a good many years.

The Court: Well, then you sat,—

A. Under the old law.

The Court:—then you are not qualified to speak on the subject.

A. No, I would sooner have Mr. Ellefson do that.

The Court: All right.

Mr. Byrne: Q. Well, I show you a copy of the Immigration laws and rules of January 1st, 1930, and ask you whether that,—whether you identified that as one of the pamphlets issued then under the authority of the Department of Labor?

A. Department of Labor, yes.

180 Q. I then offer in evidence subdivision "b" of rule 12 of the Board or Boards of special inquiries, paragraph one,—

Mr. Healy: Now, just a minute.

Mr. Byrne: Reading as follows:

Mr. Healy: This was not a board of special inquiry case, this is an Immigration Inspector.

The Court: Yes, I will take it subject to your objection to save time.

Mr. Healy: There is a big difference between a board of special inquiry case,—

The Court: All right, then if that's true, it won't be pertinent.

(Mr. Byrne reading from pamphlet.)

"Subdivision B.—Hearings.

Paragraph 1. Boards of special inquiry shall determine all cases as promptly as circumstances permit, due regard being had to the necessity of giving the alien a fair hearing. Hearings before the boards 'shall be separate and apart from the public'; but the alien may have one friend or relative present after the preliminary part of the hearing has been completed: Provided, First, that such friend or relative is not and will not be employed by him as counsel or attorney; second, that, if a witness, he has already completed his testimony; third, that he is not an agent or a representative at any immigration station of an immigrant aid or other similar society or organization; and, fourth, that he is either actually related to or an acquaintance of the alien."

Mr. Byrne: This is reading from Pamphlet of January 1st, 1930, that's all Mr. Clark.

Mr. Healy: That's all.

(Witness excused.)

Mr. Byrne: That's all the testimony I have, your Honor.

181 And thereupon the respondent to maintain the issues on his part introduced the following evidence, to-wit:

HELEN C. ROLLESTON called as a witness on behalf of respondent, having been first duly sworn on oath, testified as follows:

My name is Helen C. Rolleston. I am a stenographer in the Bureau of Immigration. I am the stenographer who took the hearing in the Anthony Volpe matter. I was present at the hearing at the time it was re-opened and Inspector Phillips came here from Key West. The people present in the room were Mr. Ellefson, the presiding officer, Mr. Byrne, Mr. Devine, Mr. Volpe, Mr. Phillips and myself. Mr. Phillips was sitting to the left of me with his back turned to Mr. Volpe at the time Mr. Ellefson had Mr. Volpe identified. Mr. Ellefson just asked Mr. Volpe if he was the man who was present at the time the other hearing was taking place, whether or not he was the man, the same man. That is the usual question that is asked at every continued hearing.

Mr. Byrne: No cross-examination.

Which was all the evidence introduced of offered or other proceedings had on the hearing of the above entitled cause.

JAMES H. WILKERSON
Judge.

Chicago, July 8, 1931.
O. K.
T. D. HEALY,
Ast. U. S. Atty.

169 And afterwards, to-wit: on the 8th day of July, 1931, being one of the days of the regular July Term of said Court, in the record of proceedings thereof, in said entitled case, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to-wit:

170 * * (Caption) * * Enter 8,

Wednesday, July 8, A. D. 1931.

Present: Honorable James H. Wilkerson, District Judge.

This day comes the Petitioner by his Attorney and presents herein his Bill of Exceptions which Bill of Exceptions is approved and signed by the Court and Ordered by the Court to be filed by the Clerk of this Court.

182 And afterwards, to wit, on the 15th day of June, A. D. 1931 there was filed in the Clerk's Office of said Court a certain Opinion in words and figures as follows, to wit:

183 * * (Caption) * * Filed 1931

Wilkerson, District Judge, (orally):

This is a petition for a writ of habeas corpus. The petition was filed on the 17th of March, 1931. After the filing of the petition the proceedings before the Inspector were reopened and additional evidence was heard. The first deportation warrant was recalled. After the case was reopened there was another deportation warrant issued. The relator is held under the second warrant.

Whatever questions of proceedure may be involved, the parties have treated the case as if the substantial questions were properly before the Court on their merits.

The return from Cuba must be treated as a new entry. That is decided in the case of Ng Sui Wing v. United States, decided by the Circuit Court of Appeals for the Seventh Circuit on the 20th of January, 1931, (citing *Lapins* v. 184 *Williams* 232 U. S. 78; *Lewis* v. *Frick*, 233 U. S. 291; *Ciccerelli* v. *Curran*, 12 Fed. (2nd) 394; *Ex parte Parianos*, 23 Fed. (2nd) 918.)

Section 19 of the Immigration Act provides for the deportation of any alien who at any time prior to entry was convicted of or who admits the commission of a felony or other crime or misdemeanor involving moral turpitude.

This relator was convicted in this Court of the crime, the nature of which is set out in the return, namely, counterfeiting strip stamps. The question squarely presented then is whether or not the section which I have just read refers to

crimes committed in this country, or to crimes committed in a foreign country.

There is another clause of Section 19 which provides for the deportation of an alien who within five years after entry is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after the entry of the alien into the United States.

The question is one which has not been decided by either the Supreme Court of the United States or the Circuit Court of Appeals for the Seventh Circuit.

The cases relied upon by the United States are *Bendel* v. *Nagle*, 17 Fed. (2nd) 719; *Weedin* v. *Yamada*, 4 Fed. (2nd) 455, and *Ex part Shibata*, 35 Fed. (2nd) 636.

185 In the Yamanda case the Circuit Court of Appeals for the Ninth Circuit construed the clause of section 19 which I read first, to cover offenses committed in the United States, saying:

"Notwithstanding the hardships of the case, we are of the opinion that the deportation warrant is valid."

In the case of *Bendel* v. *Nagle*, *supra*, the same Court adhered to that construction of the statute, saying:

"An alien who voluntarily leaves this country is subject to all the provisions of the Immigration Act whenever he seeks to return." (Citing *Lapina* v. *Williams*, *supra*; *Lewis* v. *Frick*, *supra*.) "And when the appellant sought to return to this country after his last visit to Canada he was confronted with the fact that he had been convicted of the crime involving moral turpitude. The conviction was ample ground for his exclusion and deportation and the fact that the crime was committed and the conviction had in this country was not material. The law excluded him because of his moral character; the disqualification was personal to himself and arose from his conviction, not from the time or place of conviction. For obvious reasons the Congress did not see fit to limit the right of exclusion to crimes committed, or convictions had, in other countries, and the courts cannot so limit it."

The opinion in that case was by Judge Rudkin. In the Shibata case the opinion was by Judge Dietrich, and while the precise question is not involved in that case, the ruling appears to have been adhered to. The difficulty, however, with the cases in the Ninth Circuit on this point is that in the case of *Wilson* v. *Carr*, (41 Fed. (2nd) 704), Judge Rud-

kin, who wrote the opinion in Bendel v. Nagle, has overruled the interpretation which that court placed in the statute in the earlier cases and has adopted the view that the stat-
186 ute does not apply to offenses committed within the United States prior to the second entry.

Reviewing the facts, he says:

"In *Weedin* v. *Tayokiche Yamada* (C. C. A.) 4 Fed. (2nd) 455, on order of deportation was upheld, based upon a conviction in this country before the last entry of the alien, but the only questions raised in this court were the statute of limitations and the character of the crime. But in *Bendel* v. *Nagle* (C. C. A.) 17 Fed. (2nd) 719, it was explicitly ruled that an alien might be deported for the commisison of a crime involving moral turpitude, committed in this country before his last entry. In *Wong Yow* v. *Weedin* (C. C. A.), 33 Fed. (2nd) 377, however, it was held that an alien Chinese could not be deported because of an admission that he had committed the crime of bigamy in this country prior to his last application to enter. See, also, *Ex parte Keibo Shibeta* (C. C. A.) 35 Fed. (2nd) 636; *United States* v. *Day* (C. C. A.) 35 Fed. (2nd) 284. In *United States* v. *Commissioner of Immigration* (D. C.) 36 Fed. (2nd) 239, it was held that an alien permanently and lawfully residing in the United Sttates could not be deported, on his return from a temporary visit abroad, for crimes involving moral turpitude committed by him in this country, and that section 19 of the Immigration Act of 1917 was only intended to exclude aliens guilty of crimes not punishable with the jurisdiction of the United States.

"On the facts here presented, the appellant could not be deported for a crime committed in 1908, had he remained here, because of the lapse of time, and the commission of that offense would be no obstacle to his naturalization, because he would only be required to establish his good moral character for a period of five years prior to the date of his application. In other wards, the law in its charity has condoned the offense for all practical purposes, and it seems shocking that an alien should be deported for a crime committed in this country, at any time during his natural life, simply because years later he crossed the international boundary line for some temporary purpose. We do not think that Congress so intended."

The cases cited by the United States from the Ninth Circuit, therefore, are not authority as they have been modified.

187 The same question is decided by the United States Circuit Court of Appeals in *Browne* v. *Zurbrick*, 45 Fed. (2nd) 931. The opinion is by Judge Denison. The Court said:

"At the time of this conviction, Browne had been a resident of the United States for eight years, and the conviction was therefore three years beyond the limit within which the statute fixes deportation as a result. It is also evident, though perhaps not important, that, if the conviction had been within the five years, the court which allowed probation would also certainly have recommended agains, and thereby barred, deportation. We have then a case where, although Congress in one clause has declared that a particular conviction did not justify deportation, it has, in another clause—if the Government's contention be correct—ordered deportation because of the same conviction. It is true that there has been an intervening departure and re-entry, and that the alien's rights and burdens, for most purposes, attend and depend upon the second entry (*Lewis* v. *Frick*, 233 U. S. 291); but that concession does not reach the point. The reasonable construction of these two clauses, so that each may have its appropriate force, is that the deportation which automatically follows a conviction is the prospective consequence of a crime and conviction in this country, while the deportation which follows conviction or admission of a crime committed before entry refers to a conviction (if not also to a crime) occurring outside of this country. The statute has been in this particular several times before the Circuit Court of Appeals of the Ninth Circuit In *Weedin* v. *Yamada*, 4 Fed. (2nd) 455, there had been a conviction in this country prior to the second entry. It was considered sufficient to support the deportation, but the question now before us was not raised or considered. In *Bendel* v. *Nagle*, 17 Fed. (2nd) 719, there had been a previous conviction, and the holding, though the discussion is summary, is clear that it was immaterial whether the conviction had been in this country or abroad. In *Wong Yow* v. *Weedin* (C. C. A.) 33 Fed. (2nd) 377, the crime during the former residence here was admitted. In a careful discussion, this was thought not sufficient to justify deportation, and because the crime had not been committed abroad. The case does not mention Bendel v. Nagle, nor suggest any distinction. What is said would seem to apply to a conviction as well as to an admission, and to indicate that the vital
188 distinction is between crimes in this country and crimes abroad. In *Keizo-Shibata* v. *Carr* (C. C. A.) 35 Fed.

(2nd) 536, the case involved an admission, not a conviction, and the court affirmed and applied the Wong Yow case, but pointed out and stressed the distinction between an admission and a conviction—thus seemingly approving Bendel v. Nagle, although not mentioning that case. We are compelled to think that upon this point there is no sound distinction between an admission and a conviction, and that the view of the statute taken by that court in the Wong Yow and the Keizo-Shibata cases necessarily leads to the view that the conviction prior to the second entry, which would bar that entry, must have been abroad and not in the United States.

"In *Linklater* v. *Commissioner* (D. C. N. Y.) 36 Fed. (2nd) 239, the subject is considered in a careful opinion by Judge Woolsey and, although the crime was there shown by admission, yet the discussion applies as well to a conviction; and we find ourselves in accord with that view of the construction of the statute.

"In passing, it should be noted that, if there is, under such circumstances, any real distinction between a conviction and an admission, the warrant of arrest is ineffective upon this point, because it makes this charge only in the alternative, 'has admitted or been convicted'; and such a charge is a nullity. *Ex parte Rodrigues* (D. C. Tex.) 15 Fed. (2nd) 878; *Keize Shibata* v. *Carr*, *supra*, at page 637 of 35 Fed. (2nd). Only upon the theory that there is no real difference in affect between admission and conviction can the lack of a distinct charge of either be overlooked."

It appears that this question has been decided against the United States by the Circuit Court of Appeals of two circuits. A District Court, in my opinion, should accept that as the weight of authority and should follow it, unless and until a different rule is laid down by the Supreme Court or by the Court of Appeals of this Circuit.

Section 19 provides for the deportation at any time within three years after entry of any alien who enters without inspection. In deciding that point I shall endeavor to fol-
189 low the rule which I followed in deciding the first one, namely, to follow the weight of authority in other cases until our Circuit Court of Appeals or the Supreme Court has spoken.

With reference to this clause the question was squarely before the Circuit Court of Appeals in the Ninth Circuit in the case of *Ex parte Saadi*, 26 Fed. (2nd) 458, the Court said:

"There is absence of statutory definition of 'inspection' in the Immigration Act, but there is sufficient specification of

the requisite proceeding to determine the right of an alien seeking for the first time to enter the United States, and provision is made for the return upon a permit in the case of a domiciled alien departing from the United States temporarily with the intention to return within a specified time; but the permit is declared not to be the exclusive means of establishing the right to return. The appellant not having secured the permit, inspection in his case was the official ascertainment of facts upon which depended his right to reenter the United States, and it involved, at the very least, the determination of the question whether he had theretofore been lawfully domiciled in the United States, and whether he had temporarily gone into a foreign country with the intention to return. He failed to pass that inspection, and failed to show his right to enter the United States. Subsequently he evaded inspection, and by a false statement as to his citizenship succeeded in returning surreptitiously to the United States. Thereby he rendered himself subject to deportation. *Lewis* v. *Frick*, 233 U. S. 291; *Morini* v. *United States* (C. C. A.) 21 Fed. (2nd) 1001; *United States* v. *Flynn* (D. C.) 17 Fed. (2nd) 524; *Singh* v. *United States*, (C. C. A.) 243 Fed. 557, and cases there cited."

The Circuit Court of Appeals of the Ninth Circuit, therefore, has adopted the view that where an alien secured his admission to the United States on the representation that he is a citizen of the United States when in fact he is not a citizen of the United States, he enters without inspection as contemplated in the Act and is, therefore, subject to deportation.

The question was before the Circuit Court of Appeals of the Second Circuit in the case of the *United States ex rel. Natali* v. *Day*, 45 Fed. (2nd) 112. The opinion is by Augustus N. Hand. There is a strong dissenting opinion by Judge Manton. Judge Hand said:

"Section 13 (b) of the Immigration Act of 1924 provides that immigrants who have been legally admitted to the United States, and who depart therefrom temporarily, may be readmitted without being required to obtain an immigration visa under such conditions as may be by regulations prescribed. But the regulations which permit aliens previously legally admitted to return from Canada within six months without having a passport, visa, or permit neither purport to nor could, in view of the express words of section 19, supra, dispense with inspection. Certainly identification of aliens, if nothing more, is vital to the enforcement of the immigration

laws and without inspection at the border any proper administration would be impossible.

"While it seems unfortunate to be compelled to sanction such a drastic penalty as deportation for the offense here, we see no alternative under the terms of the statute."

As I have stated, Judge Manton dissented. He takes the view that to reenter under the conditions, such as disclosed by the record in this case, is not an entry without inspection.

There has been cited the opinion of Judge Learned Hand in 34 Fed. 929, in which there is some language which might
191 indicate that he did not agree with the interpretation placed upon the statute by the two judges who concurred in the opinion in *United States* v. *Day, supra.* However, so far as the Circuit Courts of Appeals have spoken on the subject, we have the opinions of the Second and Ninth Circuits announcing the rule that if the alien obtains his admission upon a representation that he is a citizen of the United States, when as a matter of fact he is not a citizen of the United States, he enters without inspection.

In other words, when he comes to enter the United States, if he is an alien he must disclose that fact, in order that the proper questions may be put to him, and he may be examined by the inspector on the subject of citizenship, not as a citizen of the United States, but as an alien. On that branch of the case the weight of authority is in favor of the contention of the United States.

Can it be said that the relator was not accorded a fair hearing? The rule is that the decision of the Secretary of Labor is final, unless it is shown that the proceedings were manifestly unfair, or such as to prevent a fair investigation, or show manifest abuse of the discretion committed to the executive officers by statute or that their authority was not fairly exercised, that is, consistent with the fundamental principles embraced within the conception of due process of law. The decision must be after a hearing in good faith, however summary, and it must find an adequate support in the evidence.

192 The record in this case shows the reception of some evidence which, if it had been offered at a trial in Court, the Judge, under the rules of evidence, would have been obliged to exclude. The admission of incompetent evidence, however, does not necessarily render a hearing unfair. The Courts have gone very far in sustaining orders in cases of this class in which incompetent evidence has been received.

Some question is made of the manner in which the testi-

mony of Inspector Phillips was handled at the reopened hearing. It is said that the should have been excluded. Well, I think it is true that he should have been excluded, but I have carefully read the record of the reopened hearing and I do not find that there was any request made for any exclusion of witnesses. I do not find that when the inspector put the question to the alien and his counsel whether or not he did receive a fair hearing, that the manner in which Phillips was allowed to come into the room was cited as one of the things that made the hearing unfair.

The exclusion of witnesses, even at a trial in Court, rests within the sound discretion of the Court. While it would have been very appropriate in a case in which the prosecutor is also judge to have kept Phillips out of the room until he was called upon to identify Volpe, it cannot be said that it was an abuse of discretion which will invalidate the order.

193 This evidence was transmitted to the Secretary of Labor; and it must be assumed that consideration was given to this action of the inspector in determining the weight to be given to the testimony of Phillips. There is the sheet with the word "Argentine" in the handwriting of Phillips. There are the check marks, showing that the statement on the sheet that Volpe was a naturalized citizen was brought to the attention of the inspector. There is, therefore, some evidence on which to base the departmental finding.

In this case, therefore, the order will be one dismissing the petition and remanding the relator to the custody of the immigration officer.

(Sgd.) JAMES H. WILKERSON,
United States District Judge.

June 15, 1931.

194 And afterwards, to wit, on the 16th day of June, 1931 being one of the days of the regular June Term of said Court, in the record of proceedings thereof, in said entitled cause, before Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

195 * * (Caption) * * Entered June 16,

ORDER.

This matter coming on for decision upon the petition for writ of habeas corpus and return of respondent thereto and traverse of petitioner to said return and the evidence of the parties presented in open court, and the court having examined said petition and return and traverse and having heard and considered said evidence and having heard and considered the oral arguments and briefs of counsel for the respective parties and being fully advised in the premises, does find that petitioner is not lawfully deportable on the charge "that he has been convicted of a felony or other crime or misdemeanor involving moral turpitude prior to his entry into the United States," for the reason that said conviction of petitioner occurred in the United States and not in any foreign country; and the court further finds that petitioner is legally deportable on the charge that he entered by means of false and misleading statements thereby entering without inspection.

It is, therefore, ordered by the court that the petition for writ of habeas corpus be dismissed and the relator, Anthony Volpe, be remanded to the custody of the respondent, S. D. Smith, District Director of Immigration for deportation to Italy.

Enter:

JAMES H. WILKERSON,
Judge.

Dated Chicago, Illinois, June 16, 1931.

196 And afterwards, to wit, on the 16th day of June, A. D. 1931 came the Petitioner by his Attorneys and filed in the Clerk's Office of said Court a certain Petition for Appeal in words and figures as follows, to wit:

197 * * (Caption) * *

PETITION FOR APPEAL.

To Hon. James H. Wilkerson, Judge of said Court:

Now comes Anthony Volpe, petitioner, by his attorneys, and feeling himself aggrieved by the order and judgment of said court entered herein on the 16th day of June, 1931, hereby petitions for an order allowing him to prosecute an appeal therefrom to the United States Circuit Court of Appeals for the Seventh Circuit, that said appeal may be a supersedeas, and that your petitioner be released on bail in an amount to be fixed by the Court pending disposition of said appeal and that defendant be granted ninety (90) days for the settlement and filing of bill of exceptions, and for filing additional assignments of error and for filing transcript of record in said Circuit Court of Appeals.

ANTHONY VOLPE,
By JOHN ELLIOTT BRYNE,
MILES J. DEVINE,
His Attorneys.

198 And afterwards, to wit, on the 16th day of June, A. D. 1931 came the Petitioner by his attorneys and filed in the Clerk's Office a certain Assignment of Errors in words and figures as follows, to wit:

199 * * (Caption) * *

ASSIGNMENT OF ERRORS.

Petitioner, Anthony Volpe, in connection with his petition for appeal, makes the following assignment of errors, which he alleges occurred upon the trial of said cause, to wit:

1. The court erred in dismissing the writ of habeas corpus and remanding your petitioner to the respondent, for deportation.

2. The court erred in failing to order petitioner's discharge from custody under the warrant of deportation dated April 28, 1931.

3. The court erred in failing to remand the case to the Bureau of Immigration for a further hearing.

4. The court erred in failing to find that petitioner is lawfully entitled to be and remain in the United States.

5. The court erred in failing to find that the said alleged warrant does not set forth any cause, sufficient in law, to authorize the deportation of petitioner from the United States.

6. The court erred in failing to find that the charges and findings in said warrant are uncertain, indefinite, and insufficient to warrant the deportation of petitioner from the United States.

7. The court erred in failing to find that the charges and findings in said warrant are not sustained by any evidence at said hearing.

200 8. The court erred in failing to find that the said warrant is issued by a person without authority under the law to do so.

9. The court erred in failing to find that petitioner did not enter the United States by false and misleading statements or either of them, and did not thereby enter without inspection; and that the evidence at said hearing proved that petitioner did not enter the United States by false and misleading statements or either of them, and did not thereby enter without inspection

10. The court erred in failing to find that the charge and finding that petitioner entered the United States by false and misleading statements, thereby entering without inspection, is uncertain, indefinite, and insufficient in law in that it fails to state, described or identify the alleged false and misleading statements and fails to state when and where petitioner so entered the United States.

11. The court erred in failing to find that petitioner was not accorded a full and fair hearing before the Bureau of Immigration in that

(a) the prosecution introduced as evidence a document entitled Certificate of Admission, purporting to relate to the entry of petitioner into the United States in 1928, which said document was and is incompetent, irrelevant, and immaterial as an unauthenticated hearsay statement in writing made several years after the events to which it refers.

(b) the Immigration Inspector presiding at the hearing erroneously rejected evidence offered by your petitioner to prove the circumstances which led to petitioner's plea of guilty in the criminal case in order to show that petitioner was in fact innocent of said crimes and also to tend to identify the count under which he was convicted (sentenced) and also

to tend to show that he was not convicted of a crime of moral turpitude.

(c) the Immigration Inspector presiding at the hearing erroneously admitted other evidence of the prosecution which was incompetent, irrelevant, and immaterial and erroneously excluded other evidence of petitioner which was competent, relevant, and material.

(d) the said hearing before the Bureau of Immigration was unfairly and improperly held, in that jurisdiction of the
201 case after March 19, 1931, was in the District Court of the United States at Chicago, Illinois, and not in the Bureau of Immigration and that the rules and decisions of the Bureau of Immigration provide that proceedings will not be held for the deportation of an alleged alien before the Bureau of Immigration while a habeas corpus case is pending in court, on behalf of such alien.

(e) said hearing was unfairly and improperly held, in that petitioner was not properly and not adequately advised of the charges against him.

(f) said hearing was unfairly and improperly held, in that the testimony of Inspector Phillips is not evidence in the legal sense of the word, in that it is incredible, beyond the bounds of human possibility, was given in an irregular manner in violation of the rules of proper procedure and the rules of the Bureau of Immigration, and is entirely counterbalanced and nullified by the testimony of witnesses for petitioner. Further, said testimony of Inspector Phillips does not constitute legal evidence, in that it is based upon hearsay and upon unauthenticated documents, the makers of which were not produced at the hearing.

(g) the hearing against petitioner was unfairly and improperly held, in that the Manifest, Government Exhibit "H" was improperly introduced in evidence against petitioner. Said manifest was made by some unknown person at an unknown place and an unknown time. It was not made, certified nor filed in accordance with the law and rules of the Bureau of Immigration and should not have been admitted in evidence. The so-called certification by Inspector Phillips in 1931 is useless, he indicating that he and his superior officers realized that the instrument had been improperly prepared and filed and should have had a certification in June, 1928, if it was, in fact, used at that time.

(h) the hearing was unfairly and improperly held, in that Inspector Phillips, before testifying, was seated in the room

of the hearing, ostensibly as a spectator, while Inspector
202 Ellefson forced petitioner to identfy himself as the Volpe who had entered the United States at Key West, Florida, on June 24, 1928, and thereupon, Inspector Phillips was sworn as a witness and went through the form of identifying petitioner as the person making such entry.

(i) the hearing was unfairly and improperly held, in that Inspector Phillips was allowed to testify that one Mr. Morgan, not produced as a witness, had told him that Volpe's party had a connection with Al Capone.

(j) the hearing was unfairly and improperly held, in that the alleged paper, known as an "alien manifest" was not produced at the hearing, notwithstanding the repeated requests of counsel for petitioner that said paper be produced. The return filed herein is inaccurate, in that it sets forth what purports to be a copy of this "alien manifest" as one of the exhibits introduced at said hearing, although, as a matter of fact, said "alien manifest" was never produced at said hearing.

(k) the return herein is inaccurate, in that it does not correctly copy Government's Exhibit "J."

(l) the hearing was unfairly and improperly held, in that none of the written documents introduced in evidence against petitioner was made, certified or filed in accordance with law or the rules and regulations of the Bureau of Immigration.

(m) the hearing was unfairly and improperly held, in that the presiding inspector refused to call as witnesses for examination by petitioner's counsel the other inspectors who participated in the making of the records introduced in evidence and also refused to call as a witness Mr. Morgan, as to whose actions and statements Mr. Phillips gave hearsay testimony at considerable length.

(n) The return and the record of the hearing are inaccurate, in that they state that Inspector Phillips was "called" as a witness, whereas the fact is that Inspector Phillips was in the hearing room before the hearing opened, remained there during the time that Inspector Ellefson identified
203 petitioner, Volpe, as the same Volpe who entered the United States on June 24, 1928, at Key West, Florida, and thereupon, Mr. Phillips was sworn and testified as a witness

12. The court erred in failing to find that the Warrant of Deportation is issued in violation of the laws and Constitution of the United States in attempting to punish petitioner twice for a single offense by causing his deportation on ac-

count of conviction for a crime, notwithstanding that defendant fully served and performed the sentence imposed by the court upon such conviction.

13. The court erred in failing to find that the proceedings before the Bureau of Immigration were conducted and the Warrant of Deportation against petitioner was issued in violation of the due process clause of the Constitution of the United States.

14. The court erred in failing to find that petitioner was forced by the prosecution to testify as a witness against himself in said proceedings before said Bureau of Immigration, in violation of the laws and Constitution of the United States.

15. The court erred in failing to find that much of the evidence against petitioner in said proceedings before said Bureau of Immigration resulted from an unlawful search and seizure of the person and property of petitioner by officers of the United States, in violation of the laws and Constitution of the United States.

16. The court erred in failing to find that the alleged false and misleading statements charged in connection with petitioner's entry in 1928, were and are immaterial and their truth or falsity had no effect on petitioner's right to return to the United States on said occasion.

17. The court erred in failing to find that petitioner was lawfully entitled to return to the United States on said occasion in 1928, regardless of the truth or falsity of said alleged false and misleading statements.

18. The court erred in failing to find that petitioner was lawfully entitled to return to the United States on said occasion in 1928, without examination or inspection as to the subject matter of said alleged false and misleading statements and therefore did not enter by said alleged false and misleading statements.

19. The court erred in failing to find that petitioner was lawfully entitled to return to the United States on said occasion in 1928 because he had been lawfully admitted to the United States in 1906, had lawfully established a bona fide continuous residence in the United States during the period from 1906 to 1928 and, without relinquishing said residence,
had visited Cuba for a temporary period of less than six
204 months, to-wit, three days, and was returning therefrom
and that his right to return to the United States existed without regard to the subject matter of said alleged false and misleading statements.

20. The court erred in failing to find that petitioner was

lawfully entitled to return to the United States on said occasion in 1928 and is lawfully entitled to remain in the United States, for the reason that petitioner has several times taken the Oath of Allegiance to the United States of America and several times relinquished all allegiance to Italy and every other foreign country or potentate, and that petitioner has several times endeavored to become naturalized as a citizen of the United States, which proceedings have been unsuccessful, through no fault of petitioner, and that petitioner now has pending before the Naturalization Department of the United States an application for his naturalization as a citizen of the United States.

21. The court erred in failing to hold that the Secretary of Labor and the Bureau of Immigration were without jurisdiction to hold proceedings and issue the Warrant of Deportation dated April 28, 1931, because of the pendency in said court of these habeas corpus proceedings.

JOHN ELLIOTT BRYNE,
MILES J. DEVINE,
Attorneys for Petitioner.

208 And, afterwards, to-wit: on the 26th day of June, 1931, the following order was entered:

209 * * (Caption) * *

Friday, June 26, A. D. 1931.

Present: Honorable James H. Wilkerson, District Judge.

On motion of attorney for the Appellant It Is Ordered that leave be and the same is hereby given to file additional assignment of errors.

210 And afterwards, to wit, on the 26th day of June, 1931, came the Petitioner by his Attorneys and filed in the Clerk's Office of said Court a certain Additional Assignment of Errors in words and figures as follows, to wit:

211 * * (Caption) * *

ADDITIONAL ASSIGNMENT OF ERRORS.

Anthony Volpe, by leave of court, in connection with his petition for appeal, makes the following additional assignment of errors which he alleges occurred upon the trial and in the order and judgment of the District Court, to-wit:

1. The court erred in finding that petitioner is legally deportable on the charge that he entered by false and misleading statements thereby entering without inspection.

2. The court erred in failing to order that the charge that petitioner has been convicted of a felony or other crime or misdemeanor involving moral turpitude prior to his entry in the United States, be vacated and set aside and petitioner discharged from custody thereunder.

Wherefore, and for the other errors described and set forth in the original assignment of errors filed herein on June 16, 1931, and for divers other errors in the record, proceedings, opinion, order, and judgment of said District Court, in this case appearing, the said Anthony Volpe prays that the order and judgment entered herein on June 16th, 1931, be set aside, vacated, and held for naught.

ANTHONY VOLPE,
By JOHN ELLIOTT BRYNE,
MILES J. DEVINE,
Attorneys for Anthony Volpe,
Petitioner.

205 And afterwards, to wit, on the 16th day of June, 1931 being one of the days of the regular June Term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

206 * * (Caption) * * Ente 16

ORDER ALLOWING APPEAL.

And now on this 15th day of June, 1931, comes Anthony Volpe, petitioner, and presents to the Court his petition for appeal to the Circuit Court of Appeals for the Seventh Circuit and certain assignments of error attached thereto and moves the Court to grant the prayer of said petition and allow an appeal as prayed for.

And due notice of said petition having been given the United States Attorney and said United States Attorney being present in court,

It Is Ordered by the Court that said appeal be and it is hereby allowed, and the defendant be and is hereby granted thirty (30) days from this date in which to present and file a bill of exceptions and for filing additional assignments of error and for filing transcript of record in the Circuit Court of Appeals, and the Court retains jurisdiction for that purpose, without prejudice to the right of the defendant to prosecute the appeal herein granted and said appeal shall oper-
207 ate as a supersedeas and the defendant be admitted to bail during the pendency of this appeal upon filing a bond in the sum of three thousand ($3000.00) dollars with good and sufficient surety within ten days.

It is Further Ordered that in assigning error page references in lieu of quotations, may be made.

Enter:

JAMES H. WILKERSON,
Judge.

Chicago, Illinois, June 16th, 1931.

212 And, on to-wit: the 26th day of June, 1931, there was filed in the office of the Clerk of said Court, the following Praecipe for Record: Filed 193

213 * * (Caption) * *

To the Clerk of Said Court:

You will please prepare a true and complete transcript of the record on the appeal of this cause to the United States Circuit Court of Appeals, including therein the following:

1. Placita.

2. Petition for writ of habeas corpus.
3. Order allowing writ of habeas corpus.
4. Writ of habeas corpus and marshal's return thereon.
5. Orders continuing cause and allowing time to Government to file return.
6. Return to writ of habeas corpus.
7. Bill of Exceptions and order approving and filing same.
8. Opinion of Judge Wilkerson.
9. Order dismissing writ of habeas corpus.
10. Petition for appeal.
11. All assignments of error.
12. Order allowing appeal.
13. Citation on appeal and acknowledgment of receipt by United States Attorney.
14. All orders extending time to file Bill of Exceptions and to file transcript of record in the Circuit Court of Appeals.
15. Copy of praecipe.

JOHN ELLIOTT BRYNE,
MILES J. DEVINE,
Attorneys for Anthony Volpe.

Received copy of above praecipe this 25th day of June, 1931.

GEORGE E. Q. JOHNSON,
United States Attorney.

214 Northern District of Illinois } ss.
Eastern Division }

I, Charles M. Bates, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled United States of America ex rel. Anthony Volpe vs. S. D. Smith, District Director of Immigration No. 39380, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 14th day of July A. D. 1931.

CHARLES M. BATES,
Clerk.

(Seal)

215 United States of America. } ss.

The President of the United States, to the United States of America and George E. Q. Johnson, United States attorney for the Northern District of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago, within thirty days from the date hereof, pursuant to an appeal duly allowed and filed in the Clerk's Office of the District Court of the United States for the Northern District of Illinois, Eastern Division, wherein Anthony Volpe is appellant and United States of America is appellee (cause No. 39380 in said District Court) and you are cited to show cause, if any there be, why the judgment rendered against the said appellant as in the said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable James H. Wilkerson, Judge of the said District Court of the United States, this ..... day of June, in the year of our Lord one thousand nine hundred and thirty-one.

JAMES H. WILKERSON,
Judge.

June 10, 1931.
Received Service of above.

G. E. Q. JOHNSON,
U. S. Atty.,
By THOMAS TODD HEALY,
Asst. U. S. Atty.

(Endorsed) * * (Caption) * * Filed Jun 26 1931 at ..... o'clock ..... M. Charles M. Bates, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 165, inclusive, contain a true copy of the Printed Record, printed under my supervision and filed on the twentieth day of August, 1931, on which the following entitled cause was heard and determined:

The United States of America *ex rel.* Anthony Volpe,
Appellant,

vs.

S. D. Smith, District Director of Immigration,
Appellee,

No. 4607, October Term, 1932, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventh day of February, A. D. 1933.

(Seal)

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At the regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago, in said Seventh Circuit on the sixth day of October, 1931, of the October Term, in the year of our Lord One Thousand Nine Hundred and Thirty-one, and of our Independence the One Hundred and Fifty-sixth.

The United States of America *ex rel.* Anthony Volpe
4607 *vs.*
S. D. Smith, District Director of Immigration.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

And afterwards, to wit: On the twenty-first day of June, 1932, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said Opinion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4607. OCTOBER TERM, 1931, APRIL SESSION, 1932.

United States of America *ex rel.* Anthony Volpe,
Appellant,
vs.
S. D. Smith, District Director of Immigration,
Appellee.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

June 21, 1932.

Before ALSCHULER, EVANS, and SPARKS, *Circuit Judges.*

The appeal is from an order of remandment in a habeas corpus proceeding brought to secure Volpe's release from

detention under a warrant of deportation. Volpe, born in Argentina and taken by his parents in early life to Italy, was in 1906, at the age of sixteen years, brought by them to the United States, where he has ever since resided, marrying an American wife, with whom he lives with their three children aged thirteen to fifteen.

In 1925, he, with others, was indicted in the Federal Court at Chicago for making, possessing, and passing counterfeit stamps, and for conspiracy to do so. Upon first trial the jury disagreed, whereupon Volpe pleaded guilty and received and served a jail sentence of thirty days.

In June, 1928, with a party of friends he went to Cuba on a sight-seeing visit, returning in two or three days by airplane, landing at Key West, Florida, a regularly designated port of entry under the immigration laws.

In December, 1930, a warrant for his arrest was served charging him with being unlawfully in the United States, in that before this entry at Key West he had been convicted of a crime involving moral turpitude, to wit, the above-named crime of counterfeiting, and wherefore he was subject to deportation. During the hearing before the inspector the additional charge was made that his entry at Key West was by false and misleading statements, and thereby without inspection.

Upon the hearing it was testified that on questioning by the inspector of immigration at Key West Volpe said he was born in Argentina, that he was a naturalized citizen of the United States, that he was naturalized at Chicago, that his papers were at Chicago, and that the inspector admitted him without further questioning.

There was some evidence to the effect that in 1920 a certificate of naturalization was issued to him, which within a few days thereafter was returned to and cancelled by the court which granted it.

Volpe was thereupon found subject to deportation upon the two grounds—his prior conviction as above stated, and his entry without inspection through making false and misleading statements. A warrant for his deportation was issued accordingly, and the writ of habeas corpus was sued out.

ALSCHULER, *Circuit Judge.* Two main issues are presented: First, did Volpe's conviction for the crime of counterfeiting, committed while he was lawfully domiciled in the United States, bar his re-entry after his three-day visit to Cuba? Second, did his false statement of his citizenship to the in-

spector at Key West constitute his entry there without inspection?

Judge Wilkerson found the first issue in Volpe's favor, holding that the statute barring entry to one who had been convicted of a crime involving moral turpitude had no application to a re-entry of the alien returning from a temporary absence, where the crime had been committed by him while he was lawfully within the United States. The second issue he resolved against Volpe, holding that the false and misleading statement of his citizenship was an entry by Volpe without inspection, subjecting him to deportation. The statute involved in both issues is set out in the margin.[1]

In his opinion Judge Wilkerson stated that since the propositions had not been decided by this court nor the Supreme Court, he would be guided by the decisions thereon of other Circuit Courts of Appeals.

Appellee insists that Judge Wilkerson's conclusion upon the first question is unwarranted, and that appellant is deportable on the ground that prior to his last entry, and while lawfully in the United States under his first entry, he had been convicted in the United States of a criminal offense involving moral turpitude, albeit the offense was committed more than five years after his first entry, and he was penalized by imprisonment for less than a year.

The weight of authority upon this proposition clearly favors Judge Wilkerson's conclusion thereon. The earlier holdings of the C. C. A. of the Ninth Circuit favor appellee's contention. *Weedin* v. *Yamada*, 4 F. (2d) 455; *Bendel* v. *Nagle*, 17 F. (2d) 719. But more recently that court has held

1. "At any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this sub-chapter, or in violation of any other law of the United States; * * * any alien who, after February 5, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; * * * any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien who shall have entered the United States by water at any time or place other than as designated by immigration officials, or by land at any place other than one designated as a port of entry for aliens by the Commissioner General of Immigration, or at any time not designated by immigration officials, or who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported." Tit. 8, U. S. C., sec. 155.

distinctly to the contrary. *Wong Yow* v. *Weedin*, 33 F. (2d) 377; *Wilson* v. *Carr*, 41 F. (2d) 704. (The same judge delivered the opinion in the Yamada and the Carr cases). In the Carr case the court said:

> "On the facts here presented, the appellant could not be deported for a crime committed in 1908, had he remained here, because of the lapse of time, and the commission of that offense would be no obstacle to his naturalization, because he would only be required to establish his good moral character for a period of five years prior to the date of his application. In other words, the law in its charity has condoned the offense for all practical purposes, and it seems shocking that an alien should be deported for a crime committed in this country, at any time during his natural life, simply because years later he crossed the international boundary line for some temporary purpose. We do not think that Congress so intended."

The identical question was before the Sixth Circuit in *Browne* v. *Zurbrick*, 45 F. (2d) 931. A very pertinent extract from the opinion in that case by Judge Denison is set forth in the margin.[2]

2. "At the time of this conviction, Browne had been a resident of the United States for eight years, and the conviction was therefore three years beyond the limit within which the statute fixes deportation as a result. It is also evident, though perhaps not important, that, if the conviction had been within the five years, the court which allowed probation would also certainly have recommended against, and thereby barred, deportation. 8 U. S. C. A. Sec. 155. We have then a case where, although Congress in one clause has declared that a particular conviction did not justify deportation, it has, in another clause—if the Government's contention be correct—ordered deportation because of the same conviction. It is true that there has been an intervening departure and re-entry, and that the alien's rights and burdens, for most purposes, attend and depend upon the second entry. (*Lewis* v. *Frick*, 233 U. S. 291, 34 S. Ct. 488, 58 L. Ed. 967); but that concession does not reach the point. The reasonable construction of these two clauses, so that each may have its appropriate force, is that the deportation which automatically follows a conviction is the prospective consequence of a crime and conviction in this country, while the deportation which follows conviction or admission of a crime committed before entry refers to a conviction (if not also to a crime) occurring outside of this country. The statute has been in this particular several times before the Circuit Court of Appeals of the Ninth Circuit. In *Weedin* v. *Yamada*, 4 F. (2d) 455, there had been a conviction in this country prior to the second entry. It was considered sufficient to support the deportation, but the question now before us was not raised or considered. In *Bendel* v. *Nagle* (C. C. A.) 17 F. (2d) 719, 57 A. L. R. 1129, there had been a previous conviction, and the holding, though the discussion is summary, is clear that it was immaterial whether the conviction had been in this country or abroad. In *Wong Yow* v. *Weedin* (C. C. A.) 33 F. (2d) 377, the crime during the former residence here was admitted. In a care-

It would be indeed anomalous that an act committed here by a lawfully domiciled alien, for which he may not be deported, would nevertheless serve to bar his re-entry after a temporary absence. The conviction having occurred over nineteen years after his entry, and the penalty having been only thirty days' imprisonment, appellant could not have been deported on such ground. It thus seems entirely reasonable to conclude that the statute which bars admission to one who prior to entry admitted, or against whom there was proved, a prior conviction of an offense involving moral turpitude, has application only to offenses committed abroad.

The two provisions of the statute involved seem to cover different subject matters, and, limiting each to the sphere of its evidently intended operation, the clause respecting exclusion for conviction prior to entry cannot have reference to convictions occurring within the United States which are the subject matter of that clause which provides in specified cases deportation for conviction here. Upon principle, therefore, as well as authority, Judge Wilkerson's conclusion upon the proposition was correct.

Appellant contends the District Court erred in holding that an alien entering the United States who makes to the immigration inspector false and misleading statements thereby enters without inspection, and is for that reason deportable. As to this proposition the District Court said: "In deciding that point I shall endeavor to follow the rule which I followed in deciding the first one, namely, to follow the weight of authority in other cases until our Circuit Court of Appeals or the Supreme Court has spoken." The court then

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ful discussion, this was thought not sufficient to justify deportation, and because the crime had not been committed abroad. The case does not mention Bendel v. Nagel, nor suggest any distinction. What is said would seem to apply to a conviction as well as to an admission, and to indicate that the vital distinction is between crimes in this country and crimes abroad. In *Keizo-Shibata* v. *Carr* (C. C. A.) 35 F. (2d) 636, the case involved an admission, not a conviction, and the court affirmed and applied the Wong Yow Case, but pointed out and stressed the distinction between an admission and a conviction—thus seemingly approving Bendel v. Nagle, although not mentioning that case. We are compelled to think that upon this point there is no sound distinction between an admission and a conviction, and that the view of the statute taken by that court in the Wong Yow and the Keizo-Shibata Cases necessarily leads to the view that the conviction prior to the second entry, which will bar that entry, must have been abroad and not in the United States.

"In *Linklater* v. *Commissioner* (D. C. N. Y.) 36 F. (2d) 239, the subject is considered in a careful opinion by Judge Woolsey, and, although the crime was there shown by admission, yet the discussion applies as well to a conviction; and we find ourselves in accord with that view of the construction of the statute."

referred to the case of *Ex parte Saadi*, 26 F. (2d) 458 (C. C. A.), in the Ninth Circuit, where it was held that a re-entry into the United States by an alien who falsely represented himself to be a citizen constitutes an entry without inspection, and subjects the alien to deportation.

Judge Wilkerson's opinion then cites to same effect *United States ex rel. Natali* v. *Day*, 45 F. (2d) 112. But an examination of that case leads us to conclude that this question was not there in issue. That was not a case where re-entry was secured through false and misleading statements to the inspector. The alien, who was lawfully domiciled here, went to Canada to assist an alien there to enter the United States without inspection. At night an Indian rowed them across the St. Lawrence river to New York State, landing them at an evidently unauthorized place, and without any inspection whatever. All that the court held was that upon re-entry there must be an inspection—a proposition which is not controverted. The element of making false statements to the inspector did not enter, and that case is not helpful upon the question.

Evidently the District Court's attention was not called to the case of *Ex parte Gouthro*, 296 Fed. 506, wherein the opinion of the District Court is strikingly applicable to the case at bar, and from which opinion we quote in the margin.[3]

3. "It is the contention of the government that the statements thus made by petitioner to the immigration inspector were false and misleading, and induced said inspector to omit further investigation into her right to enter the country, and that therefore she entered 'without inspection,' within the meaning of the Immigration Act. There is no evidence whatever to the effect that petitioner avoided further questions by her answers to the questions which were asked of her. Nor does it appear that any further questions would have elicited facts showing any ground for her exclusion. No such facts were developed by the searching cross-examination to which she was subjected at the hearing before the immigration officials in the deportation proceedings already mentioned and there seem to have been no grounds for the exclusion of petitioner. * * *

"No legal definition nor explanation of the meaning of the word 'inspection,' as used in this statute, has been brought to the attention of this court, and I have been unable to find any. The Immigration Act provides in general terms that 'the inspection' of aliens seeking admission shall be 'conducted by immigrant inspectors,' and such inspectors are authorized to 'board and search for aliens any vessel, railway car, or any other conveyance, or vehicle in which they believe aliens are being brought into the United States.' * * * If such an inspector is afforded a full and fair opportunity to make such an inspection of arriving aliens as he may deem sufficient, it cannot, in my opinion, be properly said that any such alien has entered 'without inspection,' even though it later develops that said inspector has not made as complete or successful an inspection as he could or should have made, especially in view of the discretion vested in immigration inspectors, as to the nature and extent of the inspection

Upon appeal this opinion became the opinion of the Sixth C. C. A., S. C., 8 F. (2d) 1023, wherein it is said: "After a careful consideration of the record, briefs, and arguments of counsel, this court concurs in the conclusion reached by the District Court, for the reasons stated in its opinion and fully sustained by the authorities therein cited."

In *Ex parte Guest*, 287 Fed. 884 (D. C.), the alien was charged with entering "by means of false and misleading statements, thereby entering without inspection." The court said: "That persons who have not made a false oath, but who have given misinformation upon inspection, are to be classified as persons who entered without inspection, is hardly a satisfactory interpretation of the law as a whole."

In *Ex parte Lalime et al.*, 244 Fed. 279 (D. C.), it was said:

> "No decision has been called to my attention holding that a misstatement to an immigration inspector, made by a person not within the excluded classes, is ground for deportation after the alien has been admitted into this country. There is no express provision to that effect in the statute, and I do not think the statute can properly be extended by implication to confer such extremely wide powers."

In the reply brief attention is called to an interesting and quite significant fact—not conclusive, of course, but having some tendency to indicate what Congress understood by the term "without inspection." The cases cited upon the question of whether an alien's false and misleading statements to an immigration inspector constitute entry "without inspection" were decided some years prior to 1929—the Gouthro cases in 1924. In 1929 there was pending in Con-

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required. * * * Even if the petitioner made false and misleading statements to him, he was not obliged to accept them as true, or to refrain from such further questions and investigation as would enable him to reach a proper conclusion as to the right of petitioner to enter the country. If a witness in court makes false statements on cross-examination, and thereby induces cross-examining counsel to forego further questioning, such a witness cannot be said to have testified 'without cross-examination.' The real complaint of the government in this connection is that petitioner made false and misleading statements to the inspector. While, however, that might have been, and perhaps should be, made a ground for the exclusion of aliens, Congress has not yet seen fit to so enact. I reach the conclusion that, whether or not petitioner made false and misleading statements to the inspector, as alleged, the contention of the government that petitioner entered without inspection is without legal basis and cannot be sustained. *Ex parte Lalime* (D. C.) 244 Fed. 279; *Ex parte Guest* (D. C.) 287 Fed. 884."

gress a bill for amending the immigration laws, containing, *inter alia*, the following:

> "That the following aliens shall, upon warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in sections 19 and 20 of the Immigration Act of 1917, if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States; * * *"
>
> "(5) An alien who hereafter enters the United States at any time or place other than as designated by immigration officials, or eludes examination or inspection by immigration officials, or obtains entry to the United States by a wilfully false or misleading representation or the wilful concealment of a material fact."

This would for the first time have introduced into the law provision for deportation for false and misleading statements or wilful concealment of a material fact. Upon conference the committees of the Senate and the House agreed upon striking this provision from the proposed bill, which was done.

Congress could not have been unmindful of the holdings of the majority of Federal Courts which had expressed themselves thereon, that such false and misleading statements did not then constitute entry "without inspection," and that deportation in such cases had been denied. This action would persuasively indicate that Congress was willing to leave the statute thereon as most of the Federal Courts passing upon the question had interpreted it.

It has been held that entry or re-entry upon a false representation where the proceedings do not disclose any lawful cause which would have warranted deportation or denied re-entry to the alien, cannot be a basis for deportation.

In *United States ex rel. Iorio* v. *Day*, 34 F. (2d) 920 (C. C. A. 2), where a domiciled alien re-entered from Italy after a temporary absence, but falsely stated he had never been imprisoned, when in fact he had been imprisoned while in the United States, the court said:

> "It is wrong to say in such a case that he came in without inspection, or in violation of law. It is true that the relator was bound to tell the truth on his application, but, if what he suppressed was irrelevant to his admission, the mere suppression would not debar him. Doubtless it might be made to do so, but we cannot find that it has been. * * * We conclude that the appel-

lant did not suppress from the vice consul facts which would have justified him in refusing a visa, had he disclosed them, and that this ground for deportation was invalid."

In *Ex parte Guest, supra,* it was said:

"* * * we have the question whether answers made by him to evade an inquiry into his status as a contract laborer are sufficient grounds for his deportation on the ground that he is unlawfully in this country, not by reason of the fact that he is a member of an excluded class, but that he evaded inquiry on the subject. * * * If, however, there was no attempt to conceal a fact which would be a cause of exclusion, but merely to conceal a fact which was not a lawful cause of exclusion, but which might, in the opinion of the applicant, be likely to cause him to be excluded, the case assumes a different aspect. A man may evade inquiries as to his status without becoming liable to punishment under section 16 of the act, and without coming within the provision of section 125 of the Penal Code.

"If full inquiry of the immigration inspectors was evaded, yet it does not appear that any detriment followed from the admission of the applicant into the country, if, in fact, he was not a contract laborer. Upon this question there now seems to have been full inquiry, and an absence of any evidence which is inconsistent with the right of the applicant to remain in the country. * * * Unless this fact is coupled with other evidence tending to show a concealment of some material matter, it hardly can be held a cause sufficient to justify deportation. * * *

"Upon the question whether or not the petitioners entered without inspection, it appears that they did not enter without such inspection as the immigration officers saw fit to give them. It does not appear that anything was concealed which, if known to the immigration inspectors, would have been a cause of exclusion."

The quotation from *Ex parte Lalime, supra,* is predicated upon the assumption that the misstatement to the immigration inspector is by a person "not within the excluded classes." In *Lewis* v. *Frick,* 189 Fed. 146 (D. C.), in discussing the effect of false statements to the inspector of immigration, it was said, "if their falsity had been discovered when made, he would, nevertheless, have had a perfect right to return to his domicile in Detroit."

If the District Court was right upon the first proposition, this record discloses no cause whatever for refusing re-entry to appellant. He had then resided in the United States twenty-two years. There was nothing disclosed then or at any of the hearings to indicate that he belonged to any of the classes excluded by the statute. Whether or not he was a citizen was wholly immaterial to the question of his right to re-enter. If the false statement of his citizenship tended to divert or limit the investigation of the inspector, nevertheless from this record it did not divert his investigation from any facts or circumstances which would have raised any lawful bar to his re-entry. The misrepresentation was at most of an immaterial fact. It may show appellant to have become a prevaricator, but prevarication is no bar to re-entry. Some questions asked upon the hearing for deportation respecting appellant's associations and practices, and some of the replies (including refusals to make reply), might have tendency to indicate his evil communications; and even his bad character or reputation, or both; but neither his associations, reputation, or character, however bad, would have barred his re-entry. It might even appear that he could not likely become a citizen because of probable inability to prove good character for five years next preceding an application therefor; but the right to remain in the United States after lawful entry, or the right to re-enter after temporary absence, to no extent depends upon the alien's qualifications for citizenship. All this is so—simply because the statute does not impose any such conditions upon an alien's remaining in the United States once having lawfully entered, or upon his re-entry after temporary absence therefrom. As was stated in *Gegiow* v. *Uhl*, 239 U. S. 3, "The statute by enumerating the conditions upon which the allowance to land may be denied, prohibits the denial in other cases."

The judgment is reversed with direction to the District Court to discharge the alien upon the habeas corpus.

Endorsed: Filed June 21, 1932. Frederick G. Campbell, Clerk.

And afterwards, to wit: On the nineteenth day of July, 1932, there was filed in the office of the Clerk of this Court, a Petition for a Rehearing, which said Petition for a Rehearing is not copied here.

And afterwards, to wit: On the twenty-ninth day of July, 1932, there was filed in the office of the Clerk of this Court an Answer to petition for a rehearing, which said Answer to petition for a rehearing is not copied here.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the City of Chicago in said Seventh Circuit on the fourth day of October, 1932, of the October Term in the year of our Lord one thousand nine hundred and thirty-two, and of our Independence the one hundred and fifty-seventh.

And afterwards, to wit: On the twenty-ninth day of October, 1932, the following further proceedings were had and entered of record, to wit:

Saturday, October 29, 1932.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

The United States of America *ex rel.* Anthony Volpe *vs.* S. D. Smith, District Director of Immigration	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.
4607	

It is ordered by the Court that the petition for a rehearing in this cause be, and the same is hereby granted, and that this cause be, and the same is hereby set down for hearing on November 17, 1932.

And afterwards, to wit: On the eleventh day of January, 1933, there was filed in the office of the Clerk of this Court, the Opinion of the Court on Rehearing, which said Opinion is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 4607. OCTOBER TERM, 1932, JANUARY SESSION, 1933.

UNITED STATES OF AMERICA *ex rel.* ANTHONY VOLPE, *Appellant,*
vs.
S. D. SMITH, District Director of Immigration, *Appellee.*

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

ON REHEARING.

January 11, 1933.

Before ALSCHULER, EVANS, and SPARKS, *Circuit Judges.*

Appellant was born in Argentine. He was early taken by his parents to Italy. In 1906, at the age of sixteen, he was brought by his parents to the United States where he has since resided. He has never been naturalized as a citizen of the United States, although he fraudulently sought and secured a naturalization decree from a state court and a naturalization certificate from the clerk thereof. The state court decree, however, was promptly revoked upon the application of the United States upon a threatened charge of perjury, and the certificate was voluntarily surrendered by him. In 1925, he was indicted in the Federal court at Chicago for making, possessing, and passing counterfeit stamps and for conspiracy so to do. He pleaded guilty and was given a jail sentence. In 1928, he went, without a passport, to Cuba and returned in a few days by airplane, landing at Key West, Florida, a regularly designated port of entry, at which place he appeared before an immigration inspector. At the hearing before the inspector, he falsely stated that he was a naturalized citizen

of the United States and that his naturalization certificate was in Chicago. After this statement was made, the inspector examined him no further.

In December, 1930, a warrant for his arrest was served upon him which charged him with being illegally in the United States. The charge was therein made that before his entry at Key West, Florida, he had been convicted of a crime involving moral turpitude, to-wit, the above-named crime, of making, possessing, and passing counterfeit stamps and of conspiracy so to do. On the hearing before the Commissioner, it was additionally charged that he had falsely stated to the inspector located at Key West that he was a naturalized citizen of the United States and therefore entered without inspection. At this hearing appellant admitted he had been arrested many times.

EVANS, *Circuit Judge.* The legal questions involved may be stated in the form of two queries:

First. Is an alien deportable under Section 155, Title 8, U. S. C., which provides for the deportation of "any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude," because of a conviction in the United States for counterfeiting, which conviction occurred nineteen years after his first entry and three years prior to his reentry?

Second. Does an alien enter the United States without inspection within the meaning of the statute (8 U. S. C. Sec. 155) subjecting him to deportation therefor, when he falsely states to the immigration inspector upon reentry that he is a naturalized citizen of the United States and thereby avoids further interrogation by the inspector?

The district court answered the second question in the affirmative and dismissed the petition for habeas corpus. Judge Wilkerson answered the first question in the negative, basing his decision on what he believed to be the weight of divided judicial opinions. He did not express his personal opinion on this question, but said:

> "The question is one which has not been decided by either the Supreme Court of the United States or the Circuit Court of Appeals for the Seventh Circuit. • • •
>
> "It appears that this question has been decided against the United States by the Circuit Court of Appeals of two circuits. A District Court, in my opinion, should accept that as the weight of authority and should

> follow it, unless and until a different rule is laid down by the Supreme Court or by the Court of Appeals of this Circuit."

Courts which have passed on both questions have differed in their conclusions. This court has been unable to agree upon the correct answer to either question.

The part of the statute applicable to the facts set forth in the first query reads:

> "any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported."

Cases which hold that the offense involving moral turpitude may have been committed in the United States or abroad are here collected.* Cases which limit the commission of the offense referred to by the statute to those committed abroad are also here collected.**

In reaching our conclusion on this question, the majority of this court have done so on the following assumptions and reasoning.

Entry into the United States and continuous residence herein afterwards are not natural nor inalienable rights which an alien possesses, but are privileges enjoyed by sufferance of the United States. *Johannessen* v. *U. S.*, 225 U. S. 227, 240. In other words, the United States may deny an alien permission to enter the United States altogether, and likewise the United States may remove the alien from its borders as it sees fit. This absolute right to deny entry to the alien, as well as the right to remove him from its boundaries, carries with it the lesser authority to impose conditions upon the alien's right to enter or to make his stay here conditional upon his good behavior, and his respect for law, and his non-violation of the criminal laws of the land. Congress has exercised its power to deal with the subject and has limited and restricted both the alien's right to enter and his right to remain after he has entered. Responding to a rising tide of public sentiment, Congress has, during the past fifteen years, made these limitations

* *U. S. ex rel. Medich* v. *Burmaster*, 24 F. (2d) 57; *Bendel* v. *Nagle*, 17 F. (2d) 719; *Weedin* v. *Yamada*, 4 F. (2d) 455; *Gomes* v. *Tillinghast*, 37 F. (2d) 935.

** *Wilson* v. *Carr*, 41 F. (2d) 704; *Wong Yow* v. *Weedin*, 33 F. (2d) 377; *Browne* v. *Zurbrick*, 45 F. (2d) 931.

and restrictions more specific and drastic. The same authoritative voice of the United States has, with what seems to be a reasonable regard for the welfare of both the alien and the people of the United States, declared that an alien who has committed one of several designated crimes, all of which are offensive and reprehensible and involve moral turpitude, shall be excluded from the United States. In other words, it has provided that the alien who is here by sufferance, and who is, so to speak, a guest, betrays the confidence which was evidenced by his permission to enter, when he commits an offensive crime. This betrayal of confidence terminates his right to remain here. His privilege of staying may thereafter be revoked. Protection against removal of the alien by the United States, however, has been provided by extending to him the privilege of citizenship which is open to all who have lawfully entered the United States for the purpose of residing here permanently. Once a citizen, the alien-born is not subject to deportation.

The entire matter being one for determination by the United States Government, and Congress having spoken on the matter, courts may not legislate on the subject or attempt to substitute their judgments for that of Congress.

In studying the language of this statute, it is significant to note that the crimes specified are those familiar to the people of the United States—"felony," "misdemeanor." The phrase "involving moral turpitude" is a familiar term in the courts of the United States. The language thus adopted is rather persuasive. For it would indeed be strange that Congress in phrasing the statute should define the offenses for which the alien might be removed, in the language of the American lawyer and the American court, if only offenses committed by the alien in a foreign country were to be included.

In *Lewis* v. *Frick*, 233 U. S. 291, and *Claussen* v. *Day*, 279 U. S. 398, the word "entry" as used in the above-quoted section was held to include a subsequent entry as well as the original entry. Why then should courts restrict its meaning by holding that the offense must be committed before the original entry? Finally, there is no reason—no basis for the distinction between like offenses committed abroad and those committed in the United States. When we make this statement we assume, of course, that appellant would be excludable had he practiced counterfeiting in Cuba. Are not the same reasons justifying his exclusion present if he counter-

feited in the United States? The time limitations in the statute no doubt are in the nature of a Statute of Limitations, which has sound reason to support it. But a distinction based upon the place where the crime is committed is one which offers no rational explanation for the distinction which appellant has attempted to make.

It is not the length of the alien's residence in the United States that is significant. What controls is the fact that alien status has continued during all the years he resided in the United States. As an alien, he enjoyed certain privileges and immunities which would not have been his had he been a citizen. On the other hand, as such alien he was subject to deportation if and when Congress saw fit to provide for his removal. Under the legislation which Congress enacted on the subject, his stay was made to depend upon his own good behavior. If he saw fit to flout the laws of the country which gave him shelter, to engage in counterfeiting its money or its war saving stamps, then his exclusion was the result of his own improper conduct. If there be any basis for distinguishing between offenses committed abroad and those committed in the United States, it would seem that Congress might well have viewed the latter as the more reprehensible. For naturally, counterfeiting by the alien abroad, while conduct over which Congress would hardly be enthusiastic, would be less irksome, less provocative of action by Congress than indulging in a similar pastime in the United States.

It is, however, idle to further pursue the possible or probable reasons that motivated the various Congresses in passing the legislation enacted on the subject of immigration. But surely, in passing, it may be fairly and persuasively said that there are better reasons for closing the door to the immigrant who has a criminal record than for excluding one because he is illiterate, a pauper, or because of the color of his skin.

The question in the last analysis is a very narrow one. It is: What is the meaning of the word "entry"? Does it mean *original* entry? Or do the courts give to the word a meaning unrestricted by a limiting adjective? Fortunately, the Supreme Court, in *Claussen* v. *Day* and *Lewis* v. *Frick*, *supra*, defined it as meaning what it says—not only the original, the second or the last entry, but *any* entry.

Question number one should be answered in the affirmative.

As to the second question, the courts are likewise in disagreement as to the effect of an alien's falsely stating to the immigration inspector that he is a citizen of the United States. Herewith are collected cases which uphold an affirmative answer* and also those which hold to the contrary.**

The section of the statute applicable to this question reads as follows:

> "* * * at any time within three years after entry, any alien * * * who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported. * * *"

The character of the deception which is here under consideration is significant. It was not one that went to a matter of detail—an incident in the officer's examination of the applicant. It was not merely a case of the applicant's falsifying. The falsification went to the vitals of any inspection. If appellant were a citizen of the United States, there was no inspection required. In fact, the inspector would have offensively exceeded his authority had he inspected a citizen after satisfying himself that the entrant was a citizen. Only inspection of aliens was necessary. The preliminary inquiry into appellant's citizen status was a requisite to determine whether any inspection was needed. Appellant's deception, therefore, was of a nature which resulted in the avoidance of an inspection.

The wisdom, as well as the necessity, of requiring an alien entering the United States to undergo an inspection is apparent. Regulation and control of immigration would be impossible without examination and inspection of the incoming aliens. If the sections of the statute which exclude aliens who are diseased, criminal or insane persons, are to be effectively carried out, examinations are necessary. If the quota law is to be complied with, all aliens must report for registration and inspection. It is to secure the enforcement of the other sections of the immigration act, which are enacted for the benefit of the public generally, that registration and inspection of aliens are so essential.

In disposing of this second question, therefore, it might be, and is, without further argument or the citation of authorities, assumed that no alien may lawfully enter the United

* *U. S. ex rel. Natali* v. *Day*, 45 F. (2d) 112; *Ex parte Saadi*, 26 F. (2d) 458; *Williams* v. *U. S.*, 186 Fed. 479; *Ex parte Greares*, 222 Fed. 157.

** *Iorio* v. *Day*, 34 F. (2d) 920; *Ex parte Gouthro*, 8 Fed. (2d) 1023; *Ex parte Guest*, 287 Fed. 884; *Ex parte Lalime*, 244 Fed. 279.

States except as he submits to inspection and meets the physical, educational, and moral requirements which Congress has seen fit to prescribe. Equally clear and unequivocal is the statute which provides that aliens who do not enter the United States lawfully may be deported.

Had the entering alien failed to report to the inspector at all, he would not have complied with the statute which required an inspection. Had he reported to the inspector and at the point of a revolver secured a record which showed an affirmative right to enter the United States, he would hardly contend that he submitted to inspection. May an alien through the more subtle, but none the less effective, method of deception accomplish what he could not have done by duress? Is fraud less destructive than duress or entire avoidance, if official action (here an inspection) be thereby avoided? Considering the purposes of an inspection, we conclude that anything which defeats it—fraud, deceit or duress —negatives inspection.

No other false or fraudulent representation could have accomplished its unlawful purpose so effectively as the one appellant adopted. To assert that he was a citizen of the United States and that his naturalization papers were in Chicago wholly disarmed the inspector and terminated the inspection. What the officer would have discovered, or might have discovered, had the inspection not been thwarted is beside the question. The inspection contemplated was defeated. In legal effect, there was no inspection.

This appeal, being from a decree dismissing an application for a writ of habeas corpus, in which proceeding the reviewing court is not at liberty to weigh the evidence, but merely to ascertain whether there is any evidence upon which the order of deportation may lawfully rest, I have not discussed any of the conflicts in the evidence nor attempted to weigh such conflicting statements.

The judgment is

AFFIRMED.

ALSCHULER, *Circuit Judge*, dissenting. Of the two legal propositions discussed in the opinion, the first was decided by Judge Wilkerson in appellant's favor, and the second against him. This court now decides both against him. I am convinced that Judge Wilkerson was right on the first and wrong on the second, and that this court is wrong on both.

While the record discloses matters well calculated to make one "see red," to my mind these things have no bearing on the right to re-entry of this domiciled alien who had first en-

tered at sixteen, and in 1928, twenty-two years after this entry, was returning from Cuba from a few days' visit there—his first absence since he first entered the country. The opinion states that, "At this (deportation) hearing appellant admitted he had been arrested many times." He did admit frequent arrests in this country, and undertook explanation of them. But there is nothing in the record to show that they had the remotest bearing on his right to re-enter or to remain here—unless indeed it be the arrest on the counterfeiting charge, if the conviction thereon may afford ground for the deportation.

It further appears that early in the deportation hearing Volpe was asked: "Do you know Al Capone, the so-called gang leader in this city?" "Have you ever had business dealings with him?" He refused to answer the questions, though later in the examination he did answer them, admitting the acquaintance but denying material dealings. But what had these matters to do with his right to re-erter or to remain here? Assuming that he was Capone's closest friend and sympathizer, how could that affect any question here in issue beyond making "background"? His right to re-enter depended to no degree upon the quality of his friends and associates, or on his own character or reputation or his moral standards.

Such irrelevant reference to Capone suggests to me that back of this deportation is Volpe's supposed participation in Capone's supposed high crimes and misdemeanors, as well as his supposed complicity in other criminalities. This inference is emphasized by the record disclosure that at the inception of the deportation proceedings, and for evident lack of evidence of a more tangible crime on which to charge and hold Volpe pending his preliminary questioning by the immigrant inspector at Chicago, he was brought before State Municipal Judge Lyle on a charge of *vagrancy* and his bond fixed at *$10,000* (which was given), and the federal immigration inspector then proceeded, *in Judge Lyle's chambers*, to question him respecting the re-entry.

While the motives actuating such prosecution must not control the conclusions of the court, they should suggest caution in accepting the fact recommendation of this only trier of the facts, and in determining whether, notwithstanding his recommendation, the great weight of the evidence was not on the side of the alien.

In this connection I here refer to the evidence bearing on the later added charge of entering without inspection. The inspector first made his recommendation for deportation to

the department, and the first deportation warrant was issued upon both of the alleged grounds. At that stage there was practically no evidence of Volpe's assertion of citizenship to the inspector, except that an unsigned form, uncertified until just before the hearing, had been filled out by some one, presumably at the time of the re-entry, listing Volpe as a citizen. At that stage of the case there was no testimony that Volpe stated he was a citizen. Three of the six others who then entered with him were witnesses at the hearing and testified that Volpe did not then say to the inspector he was a citizen, but that he said he had first papers. Volpe himself testified he told the inspector he had had citizen papers which he had given up. It was in this state of the evidence, with practically nothing to indicate a representation of citizenship, and the testimony of four denying that such representation was made, that the inspector recommended deportation on the ground of Volpe's statement of citizenship to the inspector, which it is contended amounted to a lack of inspection.

But, notwithstanding the deportation warrant had already issued, it appears that after the writ of habeas corpus had been granted the immigrant inspector took a new hold, and had the case reopened, and for the first time there was introduced as a witness Inspector Phillips from Florida, who said he was the inspector who admitted Volpe and his associates at Key West on their return by airplane. Although the hearing was nearly three years after the time of the re-entry—and the entries at that port were from 30,000 to 50,000 annually, of which Phillips said he had his full share—and although during all this time his attention had never been called to this matter, he assumed to give the very words of the conversation between Volpe and himself, and even to identify him as he saw him at the hearing for the first time since the re-entry. He could not describe any of the others who entered with Volpe or even state any of his conversations with them, although there appears no reason why he would recall such details as to Volpe and not as to any of his associates.

Notwithstanding that the deportation warrant had been issued long before Phillips testified, evidently the representatives of the Government deemed it so necessary to bolster up the case on the proposition of false representation of citizenship as to require reopening at that advanced stage of the proceedings to let in Phillips' testimony. But to my mind his incredible feat of memory did not give substantial evidentiary support to this proposition, whereon in my judgment the

great weight of the evidence was with appellant, after as well as before Phillips testified.

It is apparent that claim of citizenship, even if made, was not "out of whole cloth." The evidence showed that he had been granted citizenship, and that citizenship papers had been issued and delivered to him; but that afterwards the naturalization officer at Chicago told him that if he did not give back the papers he would be prosecuted for perjury, and that thereupon he handed the papers to that officer, and there was a notation in the inspector's office at Chicago that the petition for final papers had been dismissed. This is all the record shows on the subject of perjury. It does not disclose the actual ground for taking back the papers, or vacating the State court judgment granting him citizenship, if in fact it ever was vacated.

The first legal proposition rests on alien's conviction, after his nineteen years' domicile, for counterfeiting stamps and for conspiracy to do so. There was a trial and disagreement of the jury, and thereafter Volpe and several co-defendants pleaded guilty and were given sentences, some to the penitentiary, and Volpe to *thirty days in jail.*

Assuming that his explanation of his plea of guilty—the expense which the trial had occasioned him, and his inability to undergo the cost of another—has no bearing, and that the term of his sentence, whether for five minutes or five years, will not avert the conclusion that he was convicted of an offense involving moral turpitude, will this, or any conviction not occurring outside the United States, consign him to a statutory excluded class and so bar him ever after from reentry, if perchance he thereafter momentarily steps beyond our boundaries?

Manifestly the conviction would not have served as a basis for his deportation had he not gone out of the country, because (a) the penalty imposed was less than one year of imprisonment, and (b) conviction was more than five years after his original entry. Sec. 19, Immigration Act of 1917; 8 U. S. C., Sec. 155.

I cannot see how this act, which could not place him in one of the excluded classes while he continued to remain, will nevertheless take on a retroactive effect, and in case of reentry consign him *nunc pro tunc* to an excluded class. I believe if the conviction cannot serve directly to deport the lawfully domiciled alien, it should not thus indirectly be made to effect the same end. Such considerations, coupled with the

atrocious possibilities of the contrary holding, convince me that the statute barring entry for conviction of crimes involving moral turpitude committed before entry, was intended to apply only to crimes committed outside the United States, but in no event to crimes which, if here committed, would not have afforded ground for deportation.

This proposition does not appear to have been decided by the Supreme Court, but a number of times has been before the Courts of Appeals and the Districts Courts, and the great weight of authority is in favor of such limitation of the statute's application. The precise question was before the Sixth Circuit Court of Appeals in *Browne* v. *Zurbrick*, 45 F. (2d) 931 (pp. 935-6), where the conclusion was reached that the statute refers only to crimes committed outside the United States. In the opinion, by Judge Denison, the prior decisions on the subject were so fully reviewed, and the questions so thoroughly discussed, that, in the interest of brevity, I refer to it as if here set out. In *Wong Yow* v. *Weedin*, 33 F. (2d) 377, and *Wilson* v. *Carr*, 41 F. (2d) 704, 706, the Ninth C. C. A. reached a like conclusion and for the very excellent reasons there stated.

The Government relies on previous cases in the Ninth C. C. A. where that court held differently—*Weedin* v. *Yamada*, 4 F. (2d) 455, followed, by the same court, in *Bendel* v. *Nagle*, 17 F. (2d) 719. But I believe these are clearly superseded by *Wong Yow* v. *Weedin* and *Wilson* v. *Carr*.

The opinion cites the cases of *Lewis* v. *Frick*, 233 U. S. 291, and *Claussen* v. *Day*, 279 U. S. 398, as indicating that the re-entry is to be regarded in the same light as if there had been no previous domicile here. These cases have to do only with the influence of the statute of limitations upon deportation. In each the ground whereon deportation was sought was sufficient therefor—the first, the bringing in a woman for purposes of prostitution, and the other, conviction and sentence for more than a year for murder committed after the re-entry. For each alien it was contended that, counting the time the alien was domiciled here prior to his last entry, his deportation was barred by the statute. The Supreme Court held that the aliens, having within the statutory period following their last entry committed acts which were sufficient to warrant deportation, the prior domicile afforded no ground for invoking the bar of the limitation.

If here it had appeared that Volpe, within the statutory period *after* his re-entry, had committed an act which would

have warranted his deportation, he could not under these cases be heard to say that his long period of prior domicile here barred his deportation.

To my mind there is not, upon the facts or in principle, the remotest relation between those cases and that at bar, where not only was the conviction long after the original entry, but was not such in respect to its penalty as would in any event have been sufficient ground for deportation.

I am in accord with Judge Wilkerson's conclusion that the manifest weight of authority on this proposition is with appellant, and believe that on principle as well as on authority this court should so hold.

Judge Wilkerson's discussion of the second proposition proceeds upon the assumption that on re-entry from Cuba Volpe falsely stated to the immigration inspector at Key West that he was a citizen of the United States, and the judge concluded and stated that under the weight of authority this constituted entry without inspection, wherefore Volpe became deportable under the applicable statute for deportation at any time after entry without inspection. Sec. 19, *supra.*

The reliance there, as well as in this court, is upon *Ex parte Saadi*, 26 F. (2d) 458 (C. C. A. 9), and *United States ex rel. Natali* v. *Day*, 45 F. (2d) 112 (C. C. A. 2). In the former the court did hold that the alien's re-entry from temporary absence on representation of his citizenship constituted entry without inspection, and he was subject to deportation.

But the Natali case involved no question of re-entry through materially false and misleading statements to an immigration inspector. There the domiciled alien went to Canada to assist another alien to enter the United States without inspection. At night an Indian rowed them across the St. Lawrence river to New York, landing them at an evidently unauthorized place, and without any inspection whatever or opportunity for it. All that the court there held was that on re-entry there must be inspection, a proposition which is not controverted. Surely that case is not helpful on the question here involved.

Evidently the attention of the district judge had not been called to the case of *Ex parte Gouthro*, 296 Fed. 506 (D. C.), the opinion in which was, on appeal, approved and adopted by the Court of Appeals of the Sixth Circuit, 8 F. (2d) 1023. That opinion presents cogent discussion of what constitutes inspection under the statutes, and points out that any exam-

ination by the inspector supplied the requirement of inspection, regardless of the extent of the inspection or whether or not false and misleading answers of the alien averted other inquiries which the inspector in his discretion might have made; and it concludes that, since the statute makes no provision for deportation because of false and misleading answers of the alien, the making of such false and misleading answers in no event affords any legal basis for the contention that the alien entered without inspection. The opinion so fully answers the Government's contention here upon that proposition that for convenience a marginal quotation therefrom is included.[1]

1. "It is the contention of the government that the statements thus made by petitioner to the immigration inspector were false and misleading, and induced said inspector to omit further investigation into her right to enter the country, and that therefore she entered 'without inspection,' within the meaning of the Immigration Act. There is no evidence whatever to the effect that petitioner avoided further questions by her answers to the questions which were asked of her. Nor does it appear that any further questions would have elicited facts showing any ground for her exclusion. No such facts were developed by the searching cross-examination to which she was subjected at the hearing before the immigration officials in the deportation proceedings already mentioned and there seem to have been no grounds for the exclusion of petitioner. * * *

"No legal definition nor explanation of the meaning of the word 'inspection,' as used in this statute, has been brought to the attention of this court, and I have been unable to find any. The Immigration Act provides in general terms that 'the inspection' of aliens seeking admission shall be 'conducted by immigrant inspectors,' and such inspectors are authorized to 'board and search for aliens any vessel, railway car, or any other conveyance, or vehicle in which they believe aliens are being brought into the United States.' * * * If such an inspector is afforded a full and fair opportunity to make such an inspection of arriving aliens as he may deem sufficient, it cannot, in my opinion, be properly said that any such alien has entered 'without inspection,' even though it later develops that said inspector has not made as complete or successful an inspection as he could or should have made, especially in view of the discretion vested in immigration inspectors as to the nature and extent of the inspection required. * * * Even if the petitioner made false and misleading statements to him, he was not obliged to accept them as true, or to refrain from such further questions and investigation as would enable him to reach a proper conclusion as to the right of petitioner to enter the country. If a witness in court makes false statements on cross-examination, and thereby induces cross-examining counsel to forego further questioning, such a witness cannot be said to have testified 'without cross-examination.' The real complaint of the government in this connection is that petitioner made false and misleading statements to the inspector. While, however, that might have been, and perhaps should be, made a ground for the exclusion of aliens, Congress has not yet seen fit to so enact. I reach the conclusion that, whether or not petitioner made false and misleading statements to the inspector, as alleged, the contention of the government that petitioner entered without inspection is without legal basis and cannot be sustained. *Ex parte Lalime* (D. C.) 244 Fed. 279; *Ex parte Guest* (D. C.) 287 Fed. 884."

In *Ex parte Guest*, 287 Fed. 884 (D. C.), to which the opinion refers, it is stated:

> "That persons who have not made a false oath, but who have given misinformation upon inspection, are to be classified as persons who entered without inspection, is hardly a satisfactory interpretation of the law as a whole."

In passing, it may be said that there is here no claim or proof that Volpe made or was asked to make oath to any statement to the inspector on his re-entry.

In *Ex parte Lalime et al.*, 244 Fed. 279 (D. C.), also there cited, the court said:

> "No decision has been called to my attention holding that a misstatement to an immigration inspector, made by a person not within the excluded classes, is ground for deportation after the alien has been admitted into this country. There is no express provision to that effect in the statute, and I do not think the statute can properly be extended by implication to confer such extremely wide powers."

It thus seems apparent to me that the great weight of the authorities, far from sustaining the conclusion reached by the District Court upon the second proposition, is most decidedly to the contrary.

The attitude of Congress with respect to this proposition is quite significant. The Gouthro, Guest, and Lalime cases were decided before 1929. In 1929 there was pending in Congress a bill to amend the immigration laws, in which there was a section defining deportable aliens to be, *inter alia:*

> "(5) An alien who hereafter enters the United States at any time or place other than as designated by immigration officials, or eludes examination or inspection by immigration officials, *or obtains entry into the United States by a wilfully false or misleading representation or the wilful concealment of a material fact.*"

This would for the first time have introduced into the immigration statutes provision for deportation for a wilfully false or misleading representation or the wilful concealment of a material fact. Upon conference of the committees of the Senate and House this classification (above italicized) was stricken from the proposed bill, and has never thereafter been included in the law, notwithstanding subsequent frequent amendment of the immigration laws. Congress could

not have been unmindful of the holdings of the majority of the federal courts which had expressed themselves to the effect that such false or misleading statements did not constitute entry "without inspection," and must have been aware that the very decided weight of authority was then against deportability for any such cause. This action would persuasively indicate that Congress was willing to leave the statute thereon as most of the federal courts had interpreted it.

It is noteworthy that, unless it be concluded that the conviction on the counterfeit charge constituted a bar to his re-entry, the alleged false statement of citizenship to the inspector concealed nothing which would have barred Volpe's right to re-entry. This right to no extent depended upon his acts, his reputation, his character, or anything else which by the statute is not made ground for his exclusion or his right to re-enter. He may have been arrested a hundred times in the United States, and his associations may have been of the most disreputable, yet all of this could not have barred his re-entry, nor be any basis for his deportation. He might thereby have been barred from citizenship; but unfitness for citizenship would not be lawful ground either for deportation or denial of re-entry to a domiciled alien who had temporarily departed. His right to re-enter did not directly or indirectly depend upon whether he was or might become a citizen of the United States; and, so far as this record shows, protracted, repeated and microscopic investigation into his life, for the purpose, evident to me, of deporting him at all hazard, has wholly failed to bring to light any legal ground for his deportation, if not found in the above stated conviction.

In *Ex parte Guest, supra*, it was said:

> "It does not appear that anything was concealed which, if known to the immigration inspectors, would have been a cause of exclusion."

In *Lewis* v. *Frick*, 189 Fed. 146, in discussing the effect of false statements to the inspector of immigration, it was said:

> "* * * if their falsity had been discovered when made, he would, nevertheless, have had a perfect right to return to his domicile in Detroit."

And in *Gegiow* v. *Uhl*, 239 U. S. 3, it was said:

> "The statute by enumerating the conditions upon which the allowance to land may be denied, prohibits the denial in other cases."

It logically follows that, be he saint or devil, Volpe's statement of citizenship, if made to the inspector as claimed, did not mislead the inspector to his detriment, and covered up nothing (unless the above conviction) which if fully revealed would to any degree have barred his re-entry. To say that the statement of his citizenship amounted to entry without inspection is, to my mind, a mere figure of speech whereby fancy is made to displace fact.

The statute does not specify what constitutes an inspection. Phillips' evidence is that the scope of the examination is largely within the inspector's discretion and judgment. If the alien physically submits himself for inspection at a proper port of entry, and the inspector admits him even without a word being uttered, I am of the belief that the inspection was sufficient, and he could not thereafter be deported merely for the want of it. Of course, if the alien "guns" himself in, as suppositiously stated in the opinion, a situation would be presented so very different from that here as to require no consideration. If under certain circumstances the inspector might have pursued the inquiry further, this does not militate against the conclusion that Volpe was in fact inspected. Indeed, Inspector Phillips testified that at that time there were no papers required for re-entry of a domiciled alien after his temporary absence in Cuba of less than six months, and that if he (Phillips) were satisfied that such an alien seeking re-entry was the person he claimed to be, he would ordinarily be admitted. (See marginal note [1] above).

Upon this proposition, not less than the other, grievous injustice and extremes of harshness and inhumanity could easily follow in the wake of such construction as that for which the Government contends—not the least of which might be the alien's liability to deportation upon the fallible recollection of an immigration inspector as to conversations occurring perhaps decades before the deportation proceedings were begun.

I well realize that in the admission or deportation of aliens Congress may in its discretion impose on aliens discriminations without reason, and hardships and inhumanities without limit; and if it has clearly so prescribed, this is the last word. But as was said in *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59,

> "Nothing is better settled than that the statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an

unjust or an absurd conclusion. *Church of the Holy Trinity* v. *United States*, 143 U. S. 457; *Henderson* v. *Mayor of New York*, 92 U. S. 259; *United States* v. *Kirby*, 7 Wall. 482; *Oates* v. *National Bank*, 100 U. S. 239."

In my judgment the statutes do not require and should not receive the construction for which appellee contends and which this court adopts. I believe the judgment of the District Court should be reversed, with direction to discharge appellant on the habeas corpus.

And on the same day, to wit: On the eleventh day of January, 1933, the following further proceedings were had and entered of record, to wit:

Wednesday, January 11, 1933.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge, presiding.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

The United States of America *ex rel.* Anthony Volpe
4607 *vs.*
S. D. Smith, District Director of Immigration

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby affirmed.

And afterwards, to wit: On the twenty-eighth day of January, 1933, there was filed in the office of the Clerk of this Court a petition for a rehearing, which said petition for a rehearing is not copied here.

And afterwards, to wit: On the first day of February, 1933, the following further proceedings were had and entered of record, to wit:

Wednesday, February 1, 1933.

Court met pursuant to adjournment and was opened by proclamation.

Present:

Hon. Samuel Alschuler, Circuit Judge.
Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Frederick G. Campbell, Clerk.
Henry C. W. Laubenheimer, Marshal.

The United States of America *ex rel.* Anthony Volpe
4607 *vs.*
S. D. Smith, District Director of Immigration

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is now here ordered by the Court that the Petition for a Rehearing in this cause be, and the same is hereby denied.

And afterwards, to-wit: On the third day of February, 1933, there was filed in the office of the Clerk of this Court, a Praecipe for Record, which said Praecipe is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

United States *ex rel.* Volpe
vs.
Smith
No. 4607.

To the Clerk of said Court:

You will please prepare a transcript of record in the above entitled cause for use in applying to the Supreme Court for a writ of certiorari, to-wit:

Transcript of record as set forth in printed volume of 165 pages filed in the Circuit Court of Appeals on August 20, 1931.

Opinion of the court rendered June 21, 1932, reversing judgment of the District Court.

Order of the court granting rehearing on motion of appellee.

Opinions of the court of January 11, 1933, both majority and dissenting.

Judgment of this court affirming judgment of District Court.

Order of the court denying petition of appellant for a rehearing.

JOHN ELLIOTT BYRNE,
MILES J. DEVINE,
Attorneys for Appellant.

Received copy of above praecipe this 3rd day of February, 1933.

DWIGHT H. GREEN,
United States Attorney.

Endorsed: Filed February 3, 1933. Frederick G. Campbell, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing Printed pages numbered from 169 to 198, inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the Praecipe for Record filed on February 3, 1933 in the case of

The United States of America *ex rel.* Anthony Volpe,
Appellant,

vs.

S. D. Smith, District Director og Immigration,
Appellee,

No. 4607, October Term, 1932, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventh day of February, A. D. 1933.

FREDERICK G. CAMPBELL,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 27, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

FILE COPY

FILED
FEB 24 1933
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1932.

No. 724

UNITED STATES OF AMERICA ex rel.,
ANTHONY VOLPE,
Petitioner,

vs.

S. D. SMITH, District Director of Immigration,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1932.

No. ————

UNITED STATES OF AMERICA *ex rel.*,
ANTHONY VOLPE,
Petitioner,

VS.

S. D. SMITH, District Director of Immigration,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Anthony Volpe for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit, respectfully shows:

Your petitioner respectfully seeks a review of a decision of the Circuit Court of Appeals affirming a judgment of the District Court dismissing the petition of your petitioner for a writ of habeas corpus and remanding petitioner to the custody of S. D. Smith, United States District Director of Immigration, for deportation (R. 155).

The petition for habeas corpus was directed against a warrant of the Assistant to the Secretary of Labor (R. 138-139) ordering deportation of your petitioner to Italy

on two charges, under Section 19 of the Immigration Act of February 5, 1917, 39 Stat. 889, 8 U. S. Code 155 (quoted as a footnote). These charges were as follows:

> **First.* That petitioner has been convicted of felony or other crime or misdemeanor involving moral turpitude prior to his entry (re-entry) into the United States, to-wit, violations of Sections 148, 150, 219 and 37 of the Criminal Code of the United States (18 U. S. C. 262, 264, 348 and 88), in possessing, making, and counterfeiting postage stamps and war savings stamps, possessing plates therefor, and conspiracy to commit said offenses.
>
> *Second.* That he entered (re-entered) the United States by means of false and misleading statements, thereby entering without inspection.

The District Court held in its written opinion (R. 147-154) that petitioner was deportable on the charge of entry by false and misleading statements, thereby entering without inspection, and that he was not deportable on the charge of conviction of a crime involving moral turpitude prior to his entry into the United States. The Court of Appeals rendered two opinions, namely, a unanimous opinion on June 21, 1932 (R. 169-179) holding that petitioner was not deportable on either of said two charges, and upon rehearing an opinion of June 11, 1933 (R. 180-196) in which the majority of the court (R. 180-186) held that petitioner was deportable on both charges and a dissenting opinion (R. 186-196) to the effect that he was deportable on neither of said charges.

---

* At any time within five years after entry * * * any alien who, after February 5, 1917, is sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; * * * any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien * * * who enters without inspection, shall upon the warrant of the Secretary of Labor, be taken into custody and deported."

A.

SUMMARY STATEMENT OF MATTERS INVOLVED.

First. Has the Court of Appeals jurisdiction to review on appeal of petitioner from that portion of a judgment of the District Court unfavorable to petitioner and favorable to respondent, another portion of the judgment favorable to petitioner and unfavorable to respondent, no appeal having been taken by either party and no assignments of error having been filed by either party to said last mentioned portion of the judgment,—said judgment granting to respondent the full relief claimed by it in the litigation?

Second. Is an alien deportable under title 8, Section 155, U. S. Code, as "an alien who was convicted * * * prior to entry, of a felony or other crime or misdemeanor involving moral turpitude" because of a conviction in the United States for counterfeiting postage and war savings stamps and conspiracy so to do, which conviction occurred nineteen years after his first entry and about three years before his re-entry?

Third. Are the crimes of counterfeiting postage stamps and war savings stamps and conspiracy so to do, or either of them, crimes of moral turpitude?

Fourth. Is an alien deportable under title 8, Section 155, U. S. Code, as an alien "who enters without inspection" when after nineteen years' residence in the United States he visits Cuba for two or three days and on re-entry to the United States states correctly to the examining inspector his name, residence address in the United States, age, birthplace, marital status, number of children, length of residence in the United States, etc., but who states falsely that he is a naturalized citizen of the United States?

Fifth. Is alienage sufficiently proven in a deportation proceeding by the statement of the presiding inspector that "the United States naturalization file shows that one Anthony Volpe, petitioner No. 30179, was admitted to citizenship March 27, 1920, by Judge David, and on the following Saturday, April 3, 1920, the order admitting Anthony Volpe to citizenship was set aside and the certificate issued to him cancelled?" (R. 22).

Sixth. Is there any evidence to sustain a charge of entry by false and misleading statements thereby entering without inspection, in proof which consists of the incredible testimony of one immigration inspector that, after the passage of two and one-half years during which time he examined 20,000 to 30,000 other entrants, he remembers that the alien stated when entering that he was a naturalized citizen of the United States, which testimony is contradicted by the testimony of the alien and several accompanying persons that he stated to the inspector that he had first papers for naturalization?

Seventh. Is a hearing fair in which the prosecution shows many immaterial and prejudicial matters such as numerous arrests of the alien without successful prosecution thereafter, the acquaintance of the alien with persons afterwards convicted of income tax violations, his supposed connection with "gangs and gangsters", and in which the prosecution refuses to produce the alien manifest made at the time of the alien's re-entry in question, and refuses to produce for cross-examination a witness whose hearsay statements were relied on by the prosecution as to the origin of the citizen's manifest containing petitioner's name at time of re-entry?

B.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

First. The majority opinion has decided an important question of general law in a way probably untenable in holding that it had jurisdiction to review the District Court's holding that conviction of crime in the United States prior to re-entry was not a cause for deportation,—because by the District Court's judgment respondent obtained all the relief it sought and could not and did not appeal from this unfavorable portion of the judgment.

National Fire Insurance Co. v. *Elliott*, 7 F. (2) 522, 527 (8th Cir.).

Millward v. *Vulcan Furnace & Equipment Co.*, 26 F. (2d) 78 (3d Cir.).

Harding v. *Federal National Bank*, 31 F. (2) 914, 919 (1st Cir.).

O'Neil v. *Wolcott Min. Co.*, 174 Fed. 527 (10th Cir.).

Building and Loan Assn. v. *Logan*, 66 Fed. 827 (5th Cir.).

Second. The holding in this case by the Circuit Court of Appeals (majority opinion) that an alien is deportable for conviction in the United States of a crime committed in the United States about nineteen years after original entry and about three years before re-entry, is in conflict with the decisions of four other Circuit Courts of Appeals, namely:

Consiglio v. *Day*, 55 F. (2d) 228 (2d Cir.);
Squillari v. *Day*, 35 F. (2d) 284 (3d Cir.);
Browne v. *Zurbrick*, 45 F. (2d) 931 (6th Cir.);
Wilson v. *Carr*, 41 F. (2d) 704 (9th Cir.); and
Wong You v. *Weedin*, 33 F. (2d) 377 (9th Cir.).

Third. The majority opinion herein has decided an important question of federal law in a way probably untenable in holding that counterfeiting postage stamps and war savings stamps and conspiracy so to do, are crimes of moral turpitude.

Bartos v. *United States District Court,* 19 F. (2d) 722, 725 (8th Cir.).

Coykendall v. *Skrmetta,* 22 F. (2) 120 (5th Cir.).

Andreacchi v. *Curran,* 38 F. (2) 498 (D. C., N. Y.).

Fourth. The question whether an alien who, when reentering, makes numerous true answers and one false answer in reply to numerous questions of the immigration inspector, thereby enters without inspection, is the subject of conflicting decisions by the Courts of Appeals. The majority opinion in the Court of Appeals in this case and the decision of the Court of Appeals (9th Cir.) in *Ex p.* Saadi, 26 F. (2d) 458, hold that such entry is entry without inspection. The Court of Appeals (8th Cir.) in *Ex p.* Southro, 8 F. (2d) 1023, and several District Courts have held that such entry is not entry without inspection, viz., *Ex p.* Lalime, 244 F. 279 (D. C., Mass.); *Ex p.* Guest, 287 F. 884 (D. C., R. I.); and *Ex p.* Gouthro, 296 F. 506 (D. C., Mich.). *Iorio* v. *Day,* 34 F. (2d) 920 (2d Cir.) logically is an authority in agreement with those last cited.

Fifth. The holding of the Circuit Court of Appeals herein that alienage was sufficiently proven by a mere statement of an immigration inspector that a record of the Naturalization Office showed cancellation of Volpe's decree of naturalization, is a decision on a question of general law in a way probably untenable. *Bilokumski* v. *Tod,* 263 U. S. 149, 44 S. C. 54, 68 L. Ed. 221; *Brader* v. *Zurbrick,* 38 F. (2d) 472 (6th Cir.); *Riley* v. *Howes,* 24 F. (2d) 686 (2d Cir.).

Sixth. The Circuit Court of Appeals herein has decided an important question of general law in a way probably untenable and in conflict with the weight of authority in holding sufficient to prove false statement the incredible testimony of Inspector Phillips that he remembered for almost three years after inspection of tens of thousands of entrants in the meanwhile, the details of his examination of Volpe, notwithstanding the contradiction of such testimony by several witnesses. *Quock Ting* v. *United States,* 140 U. S. 417, 11 S. C. 733, 35 L. Ed. 501; *Arkwright* v. *Gonser,* 59 F. (2d) 702, 706 (9th Cir.); *Allen* v. *Collins,* 52 F. (2d) 708 (8th Cir.); *Larabee Flour Mills* v. *Carignano,* 49 F. (2d) 151 (10th Cir.).

Seventh. The Circuit Court of Appeals herein has decided an important question of general law in a way probably untenable in deciding in substantial effect that the deportation hearing was not unfair, notwithstanding the production of immaterial and prejudicial testimony by the prosecution, such as numerous unjustified arrests of petitioner, his acquaintance with persons afterwards convicted of income tax violations, and his supposed connection with gangs and gangsters, and the refusal by the prosecution to produce a material witness whose hearsay statements were introduced against defendant, and the refusal by the prosecution to produce the alien manifest whose contents were described orally by Inspector Phillips in an attempt to corroborate his testimony. *Kwock Jan Fat* v. *White,* 253 U. S. 454, 40 S. C. 566; *Mason* v. *Tillinghast,* 27 F. (2d) 580 (1st Cir.); *Gonzales* v. *Zurbrick,* 45 F. (2d) 934 (6th Cir.); *Whitfield* v. *Hanges,* 222 F. 745 (8th Cir.); *Ungar* v. *Seaman,* 4 F. (2d) 80 (8th Cir.).

Wherefore, your petitioner prays that a writ of certiorari issue under the seal of this court, directed to the Circuit Court of Appeals for the Seventh Circuit, direct-

ing said court to certify and send to this court a full and complete transcript of the record and of the proceedings in said Circuit Court of Appeals had in Case No. 4607 entitled *United States ex rel. Anthony Volpe* v. *S. D. Smith, District Director of Immigration*, to the end that this cause may be reviewed and determined by this court as provided for by the statutes of the United States; and that the judgment herein be reversed by this court, and for such further relief as to this court may seem proper.

ANTHONY VOLPE,
By FRANK R. REID,
His Attorney.

JOHN ELLIOTT BYRNE,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

Opinions of courts below.

The first opinion of the Circuit Court of Appeals (that of June 21, 1932, not yet reported) appears in the record in full at pages 169-179; the second opinion (that of January 11, 1933, not yet reported) appears in full in the record at pages 180-186 for the majority opinion and pages 186-196 for the dissenting opinion. The opinion of the District Court appears in the record at pages 147-154.

II.

Jurisdiction.

The jurisdiction of the Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, Section 347, title 28 U. S. C.

III.

Statement of the case.

Petitioner Volpe was born in the Argentine about forty-two years ago (R. 21) and taken by his parents in early life to Italy from whence in 1906 at the age of sixteen years he was brought by them to the United States (R. 25) where he has ever since resided, marrying an American wife

with whom he lives with their three American children aged thirteen to fifteen (R. 16). He has supported himself and his family by working at places and for firms set forth in detail by him (R. 43).

Volpe was naturalized as a citizen of the United States on March 27, 1920, by Judge David of one of the State Courts of Illinois. A few days later a naturalization examiner told Volpe he would cause him to be prosecuted for perjury unless he agreed to cancellation of the certificate (R. 22-23). The only proof of cancellation was the statement of the presiding inspector at the deportation hearing that the naturalization files showed cancellation (R. 22-23).

In 1925 Volpe was indicted with others for making, possessing and passing counterfeit stamps and conspiracy so to do. Volpe pleaded not guilty. After a lengthy trial the jury disagreed (R. 129). As Volpe's limited means had been exhausted by the first trial, he agreed to plead guilty and take a sentence of thirty days in jail, which sentence was imposed and duly served by him (R. 83).

In June, 1928, he went to Cuba with a party of friends on a sightseeing visit, returning in two or three days by airplane, landing at Key West, Florida, a regularly designated port of entry under the immigration laws and regulations.

In December, 1930, a warrant of the Bureau of Immigration was served charging him with being unlawfully in the United States in that before his entry (re-entry) at Key West, he had been convicted of a crime of moral turpitude by the counterfeiting charges above mentioned. During the hearing the additional charge was made orally that his entry at Key West was by false and misleading statements and thereby without inspection (R. 27).

There were two sets of deportation hearings in this case

and two warrants ordering deportation, viz., one set of hearings, and a warrant before habeas corpus proceedings were instituted and one set and a second warrant after such institution and while said proceedings were pending (R. 7, 87, 138). The purpose of the government in ordering the second set of hearings was to present the testimony of Inspector Phillips as to petitioner's alleged false statements when re-entering. The government relies on the entire evidence at both sets of hearings and on the second warrant of deportation (R. 138).

At the deportation hearing it was testified by Inspector Phillips, who examined this party at Key West, that Volpe was asked a number of questions and among other things stated that he was a naturalized citizen of the United States and that his papers were in Chicago and he was thereupon admitted (R. 90-91). The testimony of Inspector Phillips was contradicted by that of four witnesses, all of whom testified that Volpe advised all inquirers in 1928 that he had only "first papers for naturalization" and that his previous certificate of naturalization as he understood, had been cancelled, Volpe (R. 27, 55, Prignano (R. 33), Serritella (R. 36), Pacelli (R. 37). Volpe is an uneducated man with no knowledge of law, and his statement that the certificate was cancelled has no probative force to show legal cancellation.

At the deportation hearing Volpe was denied opportunity to explain the reasons which led him to plead guilty to an indictment containing charges of which he maintains he is innocent (R. 40-43). The immigation officials, however, brought into the record many irrelevant and prejudicial matters, viz., as to whether Volpe knew Al Capone, the so-called gang leader, as to whether he was a member of his so-called gang (R. 30), that one of the members of the party visiting Cuba was Jacob Guzik, who was convicted

several years later of income tax evasion (R. 30), that Volpe was several times arrested but never convicted (R. 59), that he was in January, 1931, arrested on a vagrancy warrant issued by Judge Lyle of the Municipal Court of Chicago (R. 59), which case later was dismissed for want of prosecution.

Appellant's counsel requested the Bureau of Immigration to produce two inspectors for examination (R. 123-124). These inspectors had had custody of the documents relied on by the government and one of them was Phillips' superior and had given him instructions about the subject-matter. This request was refused by the presiding inspector (R. 127, 128).

Appellant's counsel requested the government to produce Mr. Morgan, whose testimony would have been very important because of the frequent use of his name by Inspector Phillips. The latter said in substance that Mr. Morgan delivered to Phillips the citizen manifest Government Exhibit H, and also said that the Volpe party was connected with Al Capone and that Morgan was present when the Volpe party arrived at Key West and that Morgan was a "representative" of the airplane company (R. 103, 109-110).

IV.

Specifications of error.

First. The Court of Appeals erred in assuming jurisdiction to review the District Court's holding that conviction of crime in the United States before re-entry, is not under the law, cause for deportation.

Second. The Court of Appeals erred in holding that an alien is deportable because of conviction in the United States for counterfeiting postage and war savings stamps and conspiracy so to do, such conviction occurring nineteen

years after his first entry and about three years before his re-entry.

Third. The Court of Appeals erred in holding that counterfeiting postage stamps and war savings stamps, and conspiracy so to do, are crimes of moral turpitude.

Fourth. The Court of Appeals erred in holding that an alien is deportable as one who enters without inspection because of the making of a false statement on re-entry from temporary absence in Cuba that he is a naturalized citizen of the United States in the course of an examination by the inspector during which the alien answers truthfully numerous other questions of the inspector.

Fifth. The Court of Appeals erred in holding that alienage is sufficiently proven by hearsay statement of the presiding inspector at the deportation hearing, that "the United States naturalization file shows that one Anthony Volpe, petitioner, 30179, was admitted to citizenship March 27, 1920, by Judge David and on the following Saturday, April 3, 1920, the order admitting Anthony Volpe to citizenship was set aside and the certificate issued to him cancelled."

Sixth. The Court of Appeals erred in holding that the false statement was sufficiently proved by the incredible testimony of Inspector Phillips, that after three years time and the examination of tens of thousands of other entrants he remembered the details of his examination of Volpe and that Volpe stated he was a naturalized citizen, which testimony was contradicted by the testimony of Volpe and three other witnesses.

Seventh. The Court of Appeals erred in holding in substantial effect that the hearing was fair, notwithstanding the production of irrelevant and prejudicial matter against petitioner and the refusal of the prosecution to produce material witnesses and material documents under its control.

V.

ARGUMENT.

(1) Error in the decision that petitioner was deportable for conviction in the United States of crime before re-entry.

(a) This question was not properly before the court of appeals for decision.

The respondent did not take any appeal with respect to the unfavorable portion of the order of the District Court on this point. Respondent filed no assignment of error and did nothing to bring the District Court decision on this proposition to the Court of Appeals for review. Indeed, it is doubtful that anything could be done to procure review. The District Court judgment gave the respondent everything it asked for, viz., the right to deport petitioner. In the case of *National Fire Insurance Co.* v. *Elliott*, 7 Fed. (2d) 522 (8th Cir.), a similar attempt was made by the defendant in error. The court said, at page 527:

> "This court is without jurisdiction to consider that question on the assignment of the defendant. Cross-errors are not assignable in the Federal Courts. *Guarantee Co.* v. *Phenix Ins. Co.*, 124 Fed. 170."

In *Millward* v. *Vulcan Furnace & Equipment Co.*, 26 Fed. (2d) 78 (3d Cir.), the court ordered certain expenses paid by complainant to defendant as a condition precedent to specific performance by the latter. The defendant appealed and the complainant did not appeal. The court said, at page 78:

> "The complainant, evidently satisfied with the decree in its favor on the main issue, did not appeal, but by a procedure quite unknown to this court—which it terms 'cross assignment of error'—charges error to the court in allowing the larger sum and making specific performance conditioned on its payment. Of course the complainant cannot in this manner hold fast to the decree for what is favorable to it and obtain a review without cost or risk."

In *Harding* v. *Federal National Bank*, 31 Fed. (2d) 914, 919 (1st Cir.), the court said:

> "It appears that the decree appealed from was in his favor and granted him all the relief he sought. His cross appeal was therefore improperly taken. *Corning* v. *Troy Iron & Nail Factory*, 56 U. S. (15 How.) 451, 464, 465, 14 L. Ed. 768; *Guarantee Co.* v. *Phenix Ins. Co.*, 124 Fed. 170, 173. And such being the case, it was not open to him to assign or urge cross-errors. *Rogers* v. *Penobscot Mining Co.*, 154 Fed. 606, 609."

Other cases hold that an appellee who takes no appeal cannot by assigning cross-errors or by argument in briefs, confer on the Court of Appeals' jurisdiction to review rulings against him in the court below. *O'Neil* v. *Wolcott Mining Co.*, 174 Fed. 527 (10th Cir.); *Building and Loan Association* v. *Logan*, 66 Fed. 827 (5th Cir.).

(b) The question was rightly decided by the District Court.

However, if the question be open for review on behalf of the Government on this record, it seems clear that Judge Wilkerson's decision on this proposition was correct. The majority opinion herein erroneously, we submit, cites the following cases as upholding the power of deportation for conviction of crime in the United States prior to entry, namely: *United States ex rel. Medich* v. *Burmaster*, 24 Fed. (2d) 57 (8th Cir.); *Bendel* v. *Nagle*, 17 Fed. (2d) 719

(9th Cir.); *Weedin* v. *Yamada*, 4 Fed. (2d) 455 (9th Cir.); *Gomes* v. *Tillinghast*, 37 Fed. (2d) 935 (D. C., Mass.).

In *Medich* v. *Burmaster*, 24 Fed. (2d) 57 (*supra*), this point was not discussed and evidently was not considered by the court.

Bendel v. *Nagle*, 17 Fed. (2d) 719 (*supra*), was expressly disapproved by the same court in the subsequent case of *Wilson* v. *Carr*, 41 Fed. (2d) 704.

In *Weedin* v. *Yamada*, 4 Fed. (2d) 455 (*supra*), the point here under consideration was not raised by counsel nor considered by the court. This fact is noted by the same court of appeals in the case of *Wilson* v. *Carr*, 41 Fed. (2d) 704, at page 706.

In *Gomes* v. *Tillinghast*, 37 Fed. (2d) 935 (Judge Morton, D. C., Mass.), evidently the point under consideration here was not raised, as Judge Morton enumerates the points raised, in which this was not included. In the course of discussion of another point, Judge Morton remarked, by way of obiter, "I am unable to see why they (a crime and conviction) should have less effect because they occurred here."

Thus it is apparent that there is now outstanding no decision by any court of appeals favoring the Government's position on this proposition other than of course the majority opinion in the present case.

On the other hand, the cases supporting Judge Wilkerson's decision and the petitioner's position are clear-cut and authoritative. The Court of Appeals of the Ninth Circuit which has had this proposition under consideration in several cases, has finally and definitely decided that deportation cannot be had because of the commission of a crime in the United States before entry or re-entry. See

Wilson v. *Carr*, 41 Fed. (2d) 704; *Wong Yow* v. *Weedin*, 33 Fed. (2d) 377.

The Court of Appeals of the Sixth Circuit has arrived at the same conclusion in an exhaustive and logical opinion in *Brown* v. *Zurbrick*, 45 Fed. (2d) 931.

In *U. S. ex rel. Linklater* v. *Commissioner of Im.*, 36 Fed. (2d) 239, Judge Woolsey, in a well considered opinion, denied the power to deport because of the commission of a crime prior to re-entry.

The majority opinion overlooks two decisions sustaining our position on this proposition. These cases are *Squillari* v. *Day*, 35 Fed. (2d) 284 (3d Cir.), and *Consiglio* v. *Day*, 55 Fed. (2d) 228 (2d Cir.). It thus appears that the Courts of Appeals of the Second, Third, Sixth and Ninth Circuits have ruled that deportation may not be had for crime committed in the United States before re-entry, and that no Court of Appeals now finally holds adversely other than the majority in the present case.

The authorities and reasons supporting our contention are cogently summarized by the Court of Appeals, Sixth Circuit, thus:

> "At the time of this conviction, Browne had been a resident of the United States for eight years, and the conviction was therefore three years beyond the limit within which the statute fixes deportation as a result. It is also evident, though perhaps not important, that, if the conviction had been within the five years, the court which allowed probation would also certainly have recommended against, and thereby barred, deportation. 8 U. S. C. A., Sec. 155. We have then a case where, although Congress in one clause has declared that a particular conviction did not justify deportation, it has, in another clause—if the Government's contention be correct—ordered deportation because of the same conviction. It is true that there has been an intervening departure and re-entry, and that the alien's

rights and burdens, for most purposes, attend and depend upon the second entry (*Lewis* v. *Frick*, 233 U. S. 291, 34 S. Ct. 488, 58 L. Ed. 967); but that concession does not reach the point. The reasonable construction of these two clauses, so that each may have its appropriate force, is that the deportation which automatically follows a conviction is the prospective consequence of a crime and conviction in this country, while the deportation which follows conviction or admission of a crime committed before entry refers to a conviction (if not also to a crime) occurring outside of this country. The statute has been in this particular several times before the Circuit Court of Appeals of the Ninth Circuit. In *Weedin* v. *Yamada*, 4 F. (2d) 455, there had been a conviction in this country prior to the second entry. It was considered sufficient to support the deportation, but the question now before us was not raised or considered. In *Bendel* v. *Nagle* (C. C. A.) 17 F. (2d) 719, 57 A. L. R. 1129, there had been a previous conviction, and the holding, though the discussion is summary, is clear that it was immaterial whether the conviction had been in this country or abroad. In *Wong Yow* v. *Weedin*, (C. C. A.) 33 F. (2d) 377, the crime during the former residence here was admitted. In a careful discussion, this was thought not sufficient to justify deportation, and because the crime had not been committed abroad. The case does not mention *Bendel* v. *Nagle*, nor suggest any distinction. What is said would seem to apply to a conviction as well as to an admission, and to indicate that the vital distinction is between crimes in this country and crimes abroad. In *Keizo-Shibata* v. *Carr*, (C. C. A.) 35 F. (2d) 636, the case involved an admission, not a conviction, and the court affirmed and applied the Wong Yow case, but pointed out and stressed the distinction between an admission and a conviction—thus seemingly approving *Bendel* v. *Nagle*, although not mentioning that case. We are compelled to think that upon this point there is no sound distinction between an admission and a conviction, and that the view of the statute taken by that court in the Wong Yow and the Keizo-Shibata cases necessarily leads to the view that the conviction prior to the second entry, which will bar

that entry, must have been abroad and not in the United States.

In *Linklater* v. *Commissioner*, (D. C. N. Y.) 36 F. (2d) 239, the subject is considered in a careful opinion by Judge Woolsey, and, although the crime was there shown by admission, yet the discussion applies as well to a conviction; and we find ourselves in accord with that view of the construction of the statute."

Brown v. *Zurbrick*, 45 F. (2d) 933, 934 (6th Cir.).

Likewise in *Wilson* v. *Carr*, 41 F. (2d) 706, 707 (9th Cir.), the court said:

"On the facts here presented, the appellant could not be deported for a crime committed in 1908, had he remained here, because of the lapse of time, and the commission of that offense would be no obstacle to his naturalization, because he would only be required to establish his good moral character for a period of five years prior to the date of his application. In other words, the law in its charity has condoned the offense for all practical purposes, and it seems shocking that an alien should be deported for a crime committed in this country, at any time during his natural life, simply because years later he crossed the international boundary line for some temporary purpose. We do not think that Congress so intended. The order of the court below is reversed."

Wilson v. *Carr*, 41 F. (2d) 706, 707, (9th Cir.).

In *Consiglio* v. *Day*, 55 F. (2d) 228, in a per curiam opinion, the Court of Appeals, Second Circuit, said at page 229:

"It becomes unnecessary for us to examine the evidence and say whether or not on July 4, 1920, the alien was in Canada. We are of the opinion that he may not be deported under sections 136, 155, U. S. Code Anno. title 8, as 'any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude,' for the reason that the crime was committed in the United States. *United States ex rel. Squillari* v. *Day*, 35 F. (2d) 284 (C. C. A. 3); *Ex parte Keizo*

Shibata, 35 F. (2d) 636 (C. C. A. 9); *Wilson* v. *Carr*, 41 F. (2d) 704 (C. C. A. 9); *Browne* v. *Zurbrick*, 45 F. (2d) 931 (C. C. A. 6). It thus appears that the Third, Sixth and Ninth circuits have construed section 19 of the act (8 U. S. C. A., sec. 155) as referring to a crime committed prior to entry, and must be one committed outside this country and not within the penal jurisdiction of the federal or state authorities, to warrant deportation. We are in accord with these views."

The argument of the majority herein that the words "felony", "misdemeanor" and "moral turpitude" are familiar in American courts, seems to amount to little more than to say that the statute is expressed in the American or English language, as of course are all our statutes. The basic flaw in the reasoning of the majority opinion on this point is that it seeks to make a different distinction between crimes committed before as compared with those committed after entry than the distinction made by Congress.

(c) The conviction of Volpe was not of crimes of moral turpitude.

The majority opinion assumes without discussion or citation of authorities, that the offenses here involved are crimes of moral turpitude. If the finding on this point was properly before the Court of Appeals we respectfully submit that conspiracy to counterfeit stamps is not a crime of moral turpitude because it is not inherently base, vile or depraved.

> "Moral turpitude is defined to be an act of baseness, vileness or depravity, in the private or social duties which a man owes to his fellow men or to society in general.
>
> "Moral turpitude implies something immoral in itself regardless of the fact whether it is punished by

law. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude."

Bartos v. *United States District Court*, 19 F. (2d) 722, 725 (8th Cir.).

Coykendall v. *Skrmetta*, 22 F. (2d) 120 (5th Cir.).

These cases hold that violation of the National Prohibition Act is not a crime of moral turpitude.

Likewise, we submit that none of the other counts charge an offense of moral turpitude. The offenses charged all have to do with counterfeiting War Savings stamps and postage stamps. There is no charge of counterfeiting money. War Savings stamps and postage stamps are designed merely to facilitate the revenue raising work of the government and violation of a revenue act is not of moral turpitude.

Thus, violation of the Narcotic Act is not of moral turpitude because the statute is merely of a revenue character.

Andreacchi v. *Curran*, 38 F. (2d) 498 (D. C., N. Y.).

(2) The majority opinion as to the false statement construction of the statute seems erroneous.

In the consideration of this case, it should be remembered throughout **that Volpe was absolutely entitled of right to enter the United States on the occasion in question.** He had an established lawful domicile of twenty-two years in the United States to which he was returning after a temporary absence of two or three days in Cuba. He was not required to present a passport, visa or permit to re-enter.

Rule 3, Sub. 1, Par. 2 of Im. Rules of Mar. 1, 1927.

He was not required to pay a head tax.

Rule 1, Sub. k, Par. 1, Im. Rules of March 1, 1927.

The Court of Appeals, 2nd Circuit, in *North German Lloyd* v. *Elting*, 48 F. (2d) 547, 548, said:

> "If the alien was, as he claimed to be, returning to a United States domicile, he was not in an excluded class, but was absolutely entitled to enter."

Some decisions hold that aliens returning from a temporary visit to Cuba, Canada, etc., need not be inspected at all. *In re Wysback*, 292 F. 761 (D. C., Mass.) and dissenting opinion in *Natali* v. *Day*, 45 F. (2) 112 (2d Cir.).

Even the courts which hold that inspection is required on return from a temporary visit to Cuba, Canada, etc., definitely indicate that **the inspection shall merely go to identification of the person and establishment of domicile and temporary visit.**

Even Inspector Phillips, after some evasion, admitted that in such case (R. 111):

> "If I am positively satisfied that person is what he claims to be, he will be admitted."

Unquestionably he was entitled to return and remain because of his true status. In other words, he was not within the excluded classes. All the decisions (except the Saadi case) hold that such a person cannot be deported for a misstatement in connection with inspection in entering.

In *Ex parte Lalime*, 244 Fed. 279 (D. C., Mass.), the court said:

> "No decision has been called to my attention holding that a misstatement to an immigration inspector made by a person not within the excluded classes, is ground for deportation after the alien has been admitted into this country. There is no express provision to that effect in the statute and I do not think the statute can properly be extended by implication to cover such extremely wide powers."

In *Ex parte Guest,* 287 Fed. 884 (D. C., R. I.), the same rule was announced in the following words:

> "That persons who have not made a false oath but who have given misinformation upon inspection, are to be classified as persons who enter without inspection, is hardly a satisfactory interpretation of the law as a whole."

In the present case, assuming for the purpose of argument that Volpe did make a misstatement, he was not under oath and therefore did not swear falsely.

The court continues:

> "If full inquiry of the Immigration Inspector was evaded, yet it does not appear that any detriment followed from the admission of the applicant into the country, if, in fact, he was not a contract laborer. Upon this question there now seems to have been full inquiry and an absence of any evidence which is inconsistent with the right of the applicant to remain in the country."

In *Ex parte Guthro,* 296 Fed. 506 (D. C. Mich.), the same principles are followed and the construction of entry without inspection by false statements is again rejected. The court says:

> "The third and last ground for the deportation of the petitioner, as stated in the warrant, is the finding that she entered by means of false and misleading statements, thereby entering without inspection. * * *
>
> The real complaint of the Government in this connection is that petitioner made false and misleading statements to the inspector. *While, however, that might have been and perhaps should be made a ground for the exclusion of aliens, Congress has not seen fit to so enact.* I reach the conclusion that, whether or not petitioner made false and misleading statements to the inspector as alleged, the contention of the Government that petitioner entered without inspection is without legal basis and cannot be sustained." (Italics ours.)

The Court of Appeals, Sixth Circuit, in a *per curiam* opinion affirmed the Guthro decision (8 Fed. (2d) 1023), saying:

> "The controlling facts and the legal principles upon which the District Court based its conclusion fully appear in the opinion of that court in *Ex parte Guthro*, 296 Fed. 506. After a careful consideration of the record, briefs, and arguments of counsel, this court concurs in the conclusion reached by the District Court, for the reasons stated in its opinion and fully sustained by the authorities therein cited. It is therefore wholly unnecessary to burden the reports with a restatement of facts, or a further discussion of the principles of law involved."

The Court of Appeals, Second Circuit, has held in *Iorio* v. *Day*, 34 Fed. (2d) 920 (July, 1929), that entry by means of a false statement is not entry without inspection.

In that case Iorio, an Italian, after living a number of years in the United States, returned to Italy for nine months and then re-entered the United States. A warrant was issued by the Bureau of Immigration charging that "he had entered by means of false statements and without inspection" (and was on his entry likely to become a public charge). At the hearing on these charges, there was evidence that before leaving the United States he had at least six times been convicted of violations of liquor laws and imprisoned at least once therefor, and that after his return he had been regularly engaged in the illicit sale of liquors.

In procuring the visa on which his re-entry was made, he swore falsely that he had never been imprisoned. The charges were held to be sustained by the Secretary of Labor. However, the Court of Appeals said, at page 921:

> "Strictly the first ground of deportation as it reads is bad in law. The statute does not make it a ground

> for deportation that the alien has made a false oath upon his application for a visa or used it to get in. *It is wrong to say in such a case that he came in without inspection* or in violation of law. It is true that the relator was bound to tell the truth upon his application, but if what he suppressed was irrelevant to his admission, the mere suppression would not debar him. Doubtless it might be made to do so, but we cannot find that it has been. So the first question comes down at most to whether the facts, had he disclosed them, would have been enough to justify the refusal of a visa or exclusion upon entry." (Italics ours.)

The court then discusses the facts and decides that the offenses involved did not justify deportation or exclusion; therefore that the false statement was not (even assuming the statute included false statements under the words without inspection) material and that the charge was invalid.

The majority opinion cites *Natali* v. *Day*, 45 F. (2) 112 (2d Cir.), as sustaining the false statement construction of the statute. This seems erroneous as there was no false statement and no inspection whatever involved in that case. See Judge Alschuler's dissenting opinion (R. 191).

The one case which holds that entry by false statement is entry without inspection is that of *Ex parte Saadi*, 26 Fed. (2d) 458. In the Saadi case, Saadi was given no inspection whatever when entering, while in the instant case Volpe was given a lengthy examination and inspection when entering.

The theory of the Saadi decision and that of the Immigration Bureau in that of the present case are essentially different. In the Saadi case the lack of inspection was fundamental and the false statement incidental or descriptive of the cause resulting in lack of inspection. In the present case, the theory of the Immigration Bureau has been that the alleged false statement was jurisdictional and

invalidated the actual lengthy inspection. In the Saadi case the court says, at page 459:

> "The act provides for the deportation of any one 'who enters without inspection;' and the charge was distinctly made that the appellant entered without inspection. *That charge is not minimized or modified by the further specification that he entered by means of false and misleading statements.*" (Italics ours.)

As Volpe was entitled to enter regardless of citizenship, the attempt to deport him is based on the veriest technicalities. Undue importance is attributed to the alleged misrepresentation as to citizenship. The question of his citizenship under the circumstances was of no more practical importance than would have been the question of his religion. If the alleged misrepresentation had been made, it would have been ethically culpable, but it would have resulted in not the slightest harm and would not be punishable by the terrible retribution of deportation and life-long exile.

As noted by Judge Alschuler herein (R. 195):

> "Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or an absurd conclusion. *Church of the Holy Trinity* v. *U. S.*, 143 U. S. 457; *Henderson* v. *Mayor of New York*, 92 U. S. 259; *U. S.* v. *Kirby*, 7 Wall. 482; *Oates* v. *National Bank*, 100 U. S. 239."
>
> *Lau Ow Bew* v. *U. S.*, 144 U. S. 47, 59.

That Congress did not intend the words "without inspection" as synonymous with "by means of false and misleading statements," is established by the history of this clause. The false statement construction of the statute was consistently repudiated by the Federal Courts in all the reported decisions on the point which appellant's counsel have been able to find, for a period of more than ten years. During that time five District Courts (viz., *Lewis*

v. *Frick*, 189 F. 146; *U. S.* v. *Martin*, 193 F. 795; *Ex parte Lalime*, 244 Fed. 279; *Ex parte Guest*, 287 F. 884 and *Ex parte Guthro*, 296 Fed. 506), and one Court of Appeals (*Ex parte Guthro*, 8 F. (2) 1023), decided adversely to the Government's present contention. During the same period Congress enacted no less than twenty-four separate statutes relating to aliens and immigration. Yet in not one of these laws did Congress indicate that the judicial construction of this clause was not correct.

Even more significant is the fact that in the early part of 1929 an effort was made to have Congress enact a law to provide that the making of false statements, by an alien in connection with inspection should constitute ground for deportation. Congress refused to pass the bill containing the provision mentioned.

This event occurred in the 70th Congress, Second Session, in which House Bill No. S-5094, as reported to the House of Representatives, contained (among others), the following provisions:

> "That the following aliens shall, upon warrant of the Secretary of Labor, be taken into custody and deported in the manner provided in sections 19 and 20 of the Immigration Act of 1917, if the Secretary of Labor, after hearing, finds that such aliens are undesirable residents of the United States: * * *
>
> (5) An alien who hereafter enters the United States at any time or place other than as designated by immigration officials, or eludes examination or inspection by immigration officials, or obtains entry to the United States by a wilfully false or misleading representation or the wilful concealment of a material fact."

The quoted provisions were entirely stricken from the bill as finally enacted March 4, 1929 (8 U. S. C. 180a).

In an effort to support the "false statement" construction the majority opinion suggests that entry in connection

with a false statement is analogous to entry by coercing the inspector with a revolver (R. 186). Judge Alschuler pertinently remarks on this point (R. 195):

> "Of course, if the alien 'guns' himself in, as suppositiously stated in the opinion, a situation would be presented so very different from that here as to require no consideration."

The Supreme Court expresses a similar thought in *Sorrells* v. *U. S.* (Dec. 19, 1932), 53 S. C. 210, 216, in these words:

> "We have no occasion to consider hypothetical cases of crimes so heinous or revolting that the applicable law would admit of no exceptions."

This court has clearly distinguished between fraud and coercion in *Fasulo* v. *U. S.*, 272 U. S. 620, 628, 47 S. C. 200, 201, thus:

> "Undoubtedly the obtaining of money by threats to injure or kill is more reprehensible than cheat, trick or false pretenses: * * * But broad as are the words 'to defraud' they do not include threat and coercion through fear or force."

(3) The prosecution did not sustain the burden of proof to establish alienage of the petitioner.

An order of deportation must be predicated on a finding of alienage. The burden of proof is on the government when alienage is asserted.

Bilokumsky v. *Tod*, 263 U. S. 149, 44 S. Ct. 54, 68 L. Ed. 221.

Brader v. *Zurbrick*, 38 Fed. (2d) 472 (6th Cir.).

Riley v. *Howes*, 24 Fed. (2d) 686 (1st Cir.).

In the present case, the proof, such as it is, is uncontroverted that appellant received a final judgment of naturalization in the Circuit (or Superior) Court of Cook County,

Illinois, in March, 1920 (R. 22, 46). These are courts of competent jurisdiction in naturalization cases (Act June 29, 1906, C-3592; Sec. 357, Title 8 U. S. Code Ann.).

To overcome the effect of this proof, the prosecution several times suggested cancellation of the naturalization judgment (R. 22). However, no attempt was made by the prosecution to produce the records or copies thereof in the naturalization case. From such proof as there is in the record, however, it appears that the order of cancellation, if one there was, was entered in violation of the Federal statute providing for cancellation by equity proceedings with 60 days' notice to defendant (Act June 29, 1906, C-3592, Sec. 15, Title 8, Sec. 405, U. S. Code).

In the present case, as the prosecution suggested that the certificate of naturalization was cancelled on April 3, 1920, one week after it was issued, the statute, it is plain, was not followed with respect to the 60-day notice. Neither is there anything in the present record to indicate that any petition for cancellation was ever filed by the authorities, or any issue made thereupon or any hearing thereon.

Instead of producing the records of the naturalization court or authentic copies thereof, the presiding inspector at the hearing made the following statement (R. 22):

> "Inspector: The United States Naturalization file shows that one Antonio Volpe, petitioner #30179, was admitted to citizenship March 27, 1920, by Judge David, and on the following Saturday, April 3, 1920, the order admitting Antonio Volpe to citizenship was set aside and the certificate issued to him cancelled."

In an attempt to cure the strange absence from the hearing of the records of the naturalization court, the immigration inspector made repeated efforts to induce the appellant to state that his certificate of naturalization was "cancelled" and that appellant was a "citizen of Italy." Appel-

lant, although an intelligent person of gentlemanly deportment, is deficient in education and knows nothing of law, so that his statements as to legal questions of "cancellation" of a court judgment and as to his citizenship, based on a complicated situation involving questions of law and fact, are of no effect.

In *Engel* v. *Zurbrick*, 51 Fed. (2d) 632 (6th Cir.), the date of entry being in issue and the alien having made conflicting statements and stated he went to work for the Ford Company within a few weeks after his arrival. The court says, at page 633:

> "The record contains a statement by the examining inspector that the records of the Ford Company showed that this man began work in June, 1923; and the conclusion of the inspector and the Department that he entered in 1923, and had been here less than three years, is confessedly based mainly on this supposed record of the Ford Company. No such record was put in evidence, nor did the aliens have any chance to cross-examine or explain. Their original evidence as to date of entry, satisfied the statutory burden of proof, *and, in treating the Ford record as sufficient to overcome their evidence, it is too plain for controversy that, in this respect, they did not have a fair trial, and that the warrants of deportation would have to be vacated for that reason, if no other.*" (Italics ours.)

In the present case the presiding inspector's statement was hearsay and was evidently his conclusion as to the purport of a letter or letters written by some unknown person, which letter or letters were again hearsay and conclusions of the unknown writer as to court proceedings and which letter or letters were stated by the inspector, as his conclusion to be a "United States Naturalization file" of some unnamed office. Where the file was kept, by whom it was kept and whether accurate or otherwise, were all matters untouched by the evidence.

Volpe has only a vague idea of what occurred in the naturalization case. Under duress he agreed to do whatever Mr. Schlotfeldt desired (R. 22). Apparently he signed some paper as required by Mr. Schlotfeldt. What this was Volpe does not know, no records were produced to show, and Mr. Schlotfeldt did not testify.

Without undertaking to impugn Mr. Schlotfeldt's motives, it is clear that he fell into the error not uncommon among Government agents, of assuming a power even greater than the great power he lawfully possessed. Judge Partridge, (D. C., Calif.), in the case of *In re Linklater*, 3 Fed. (2d) 691, made the following judicious observation:

> "Lastly, the naturalization department makes certain suggestions as to its powers. I do not feel called on to discuss those questions, except to negative the claim that such an examiner is a 'master'. His powers are clearly administrative, and not judicial in any sense. *I am equally clear that such examiners have no power or authority to prevent a man from filing his petition under any circumstances.*" (Italics ours.)

Equally clear also is it that the naturalization agent has neither lawful power nor authority to coerce by threats of criminal prosecution, a man into foregoing his right to consult counsel and to waive the benefits of his judgment of naturalization.

In *Yick Wo* v. *Hopkins*, 118 U. S. 356 6 S. C. 1064, the Supreme Court said:

> "When we consider the theory and nature of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power."

We respectfully submit that the Government has not sustained the burden of proving alienage.

(4) The finding of the making of a false statement by appellant is not sustained by the evidence.

In this connection, we respectfully call attention to the masterly analysis of the evidence by Judge Alschuler, in his dissenting opinion (R. 186-189).

Assuming for the purpose of argument that the false statement intended to be proved was that Volpe was a naturalized citizen of the United States in June, 1928, the proof fails to sustain said charge, because

(a) Phillips does not testify that Volpe said he was a naturalized citizen *in June, 1928* (R. 90, 103).

(b) If Volpe explained that in 1928 he had only first papers there was no false statement. That he made this explanation to Phillips is proved by the testimony of Volpe (R. 27, 55, 110), Serritella (R. 34), and it is indicated by that of Prignano (R. 31) that Volpe made this explanation to the officials in Cuba; also that of Pacelli (R. 37).

(c) Phillips twice evaded the issue when asked what false statements Volpe made to him.

At R. 103 is the following:

"Q. (by Inspector Ellefson): Assuming now that Mr. Volpe was not on June 24, 1928, a citizen of the United States, did he, during the course of your examination of him, make any statement that was false and misleading?

A. I didn't at the time I examined Mr. Volpe, believe that he made any false statements. I was satisfied with all the statements he made."

At p. 110 in this:

"Inspector Ellefson to Mr. Volpe: Do you wish to question Inspector Phillips?

A. Yes, sir.

Mr. Volpe to Inspector Phillips: Q. Mr. Phillips, when I landed at Key West at the Immigration Department, you asked me what my name was, when I was born, my home address, if I was married, if I had any children, if I had my own home,

and you asked me if I was a citizen of the United States, and I said, 'I got my first papers.' You said to me, 'How long you been in the United States?' I says, '23 years' and you said to me, 'were you ever an American citizen, I says to you 'yes, 1920, March 27.' You asked me who naturalized me. I said, 'Judge David, Circuit Court.' Is that right?

A. All that you have said 'Is that right?' Part of what you have said, some I don't remember of ever asking you."

(d) Phillips examined between 18,000 and 30,000 entrants since Volpe and it is beyond human probability that he could remember the details of his conversation with Volpe almost three years before (R. 91-92).

(e) Phillips did not remember Volpe as shown by the fact that Volpe was identified at the hearing by Ellefson for Phillips' benefit, in violation of the rules and practice of the Bureau of Immigration (R. 88-89).

(f) Phillips' memory was very poor because

1. He could not remember Inspector Ellefson's name (R. 108).

2. He could not remember the personal appearance of any one in the Volpe entering party (R. 91-94).

3. He could not remember what he asked Volpe and the others except by reading the manifest (R. 93-95, R. 101).

4. He could not remember whether he swore Volpe and the others or not (R. 118).

5. He could not remember a recent conversation about this matter with his inspector in charge (R. 105).

6. He could not recall the hour of arrival on duty on Sunday, June 24, 1928 (R. 110).

7. He could not remember the present Immigration Rules as to lists of air-men and passengers on aircraft (R. 116-118).

(g) Phillips' testimony is based largely on the "Manifest" Exhibit H (R. 89-112) which is unreliable because

1. Not signed by any one,

2. Not verified by any one,
3. Prepared by an unknown person in a foreign country,
4. Incomplete on its face,
5. If checked at all by Phillips, only partially so,
6. Never shown to Volpe nor its contents divulged to him when entering.

For the above reasons, we respectfully submit that the evidence does not support the finding that appellant entered by means of false and misleading statements.

In the case of *Security Life Ins. Co.* v. *Seeber*, 41 Fed. (2d) 600, the Court of Appeals (7th Cir.) had under consideration the question of the accuracy of testimony of a witness as to a routine matter occurring three years before. The testimony of plaintiff's witness that the payment of an insurance premium was made on a certain date, was believed by the jury and resulted in a verdict for plaintiff. Nevertheless the Court of Appeals considered that the opposing testimony of one witness for defendant with corroborating facts, justified reversal and stated that there should have been a directed verdict for defendant (page 601).

As graphically stated by Judge Alschuler, Mr. Phillips' "incredible feat of memory" did not give substantial evidentiary report to the false statement charge and certainly could not overcome the substantially contradictory evidence of several opposing witnesses.

The rule is well established that testimony even though uncontradicted is not evidence if so improbable or incredible as to be unworthy of belief.

Quock Ting v. *U. S.*, 140 U. S. 417, 11 S. C. 733, 35 L. Ed. 501.

Arkwright v. *Gonser*, 59 Fed. (2d) 702, 706 (9th Cir.).

Easton v. *Brant*, 19 Fed. (2d) 857, 859 (9th Cir.).

Jones v. *Jones*, 35 Fed. (2d) 943, 945 (9th Cir.).
Allen v. *Collins*, 52 Fed. (2d) 708 (8th Cir.).
Larabee Flour Mills v. *Carignano*, 49 Fed. (2d) 151 (10th Cir.).

VI.

The hearing was unfair.

(a) The prosecution refused to produce material witnesses and material documents under its control.

Inspector Phillips testified he recalled the entry of Volpe because a certain Mr. Morgan told him the party had some connection with Capone (R. 103); also that Morgan delivered to Phillips the "manifest" prepared by some unknown person in Cuba (R. 92), also that Morgan delivered an alien manifest for the same trip of this plane (R. 93). Clearly the testimony of Morgan would be very important and appellant was certainly entitled to have his testimony included in the record by the government.

> "The right to cross-examine, even in deportation proceedings, is a constitutional one."
>
> *Gonzales* v. *Zurbrick*, 45 Fed. (2d) 934 (6th Cir.).
> *Whitfield* v. *Hanges*, 225 Fed. 745.
> *Ungar* v. *Seaman*, 4 Fed. (2d) 80.

In *Gonzales* v. *Zurbrick*, 45 Fed. (2d) 934, *supra*, the court held the hearing unfair because a witness was not produced by the prosecution for cross-examination, although no request was made for that privilege by defendant. The court held that it was the duty of the government officials to accord that right, even though not requested, saying, page 937:

> "The interest of truth clearly required that she be offered an opportunity to cross-examine."

So in the present case.

In view of the unverified and informal character of the "manifest" and other "records," the testimony of Inspectors Albury and Cavennes should have been produced as to the condition of these papers when delivered to Phillips, as requested by petitioner's counsel (R. 127-128).

Inspector Phillips, after much questioning by appellant's counsel, finally admitted the existence of an "alien manifest" for this trip of this plane but Inspector Ellefson refused to submit it to counsel's inspection. As this document could easily have been sent to Chicago, the withholding of it by the Bureau justifies the inference that its contents would be unfavorable to the prosecution and inconsistent with Inspector Phillips' testimony.

The rule of law is well settled that the withholding of evidence is strong indication that the evidence if produced would be unfavorable.

U. S. v. *Reyburn*, 6 Pet. 352.
Kirby v. *Tallmadge*, 160 U. S. 379, 383.
Clifton v. *U. S.*, 4 How. 242.
Runkle v. *Burnham*, 153 U. S. 216, 226.

(b) The prosecution introduced irrevelant and prejudicial evidence against petitioner.

At the hearing the prosecution brought into the record many alleged matters prejudicial in nature and immaterial to the deportation charges against appellant. Thus, five or six arrests of Volpe (R. 26), whether he knew Al Capone, the so-called gang leader, and whether he was a member of Capone's so-called gang (R. 30), that one Jacob Guzik accompanied appellant when re-entering the United States in 1928 and that Jacob Guzik was recently (in 1930) sentenced for income tax evasion (R. 30), as to whether he belonged to the Capone gang (R. 51), as to whether he was

in sympathy with gangs (R. 51), that he had been arrested several times (though never convicted) (R. 59).

Probably the finding in effect, that Inspector Phillips testified truly and that Mr. Volpe and his several witnesses who contradicted Mr. Phillips testified otherwise, must be based on this evidence or suggestions and have resulted in a feeling by the Secretary of Labor that appellant and his associates were not worthy of belief.

The fact that the immigration hearings are not subject to the strict laws of evidence, does not alter the unfairness of the hearing in including such matters and excluding appellant's explanation of his conviction for counterfeiting (R. 40, 42).

As the Court of Appeals (1st Cir.) has said in *Mason* v. *Tillinghast*, 27 F. (2d) 580:

> "Department tribunals are not bound by the rules of evidence applicable in a jury trial. But they are bound by the rules of reason and logic—by what is commonly referred to as common sense."

And in *Knock Jan Fat* v. *White*, 253 U. S. 454, the Supreme Court, referring to the great power given the Secretary of Labor over Chinese immigration, said at page 464:

> "It is a power to be administered not arbitrarily and secretly, but fairly and openly, under the restraint of the tradition and principles of free government applicable when the fundamental rights of men are involved, regardless of their origin or race. It is the province of the courts to prevent abuse of this extraordinary power."

The rule of law pertinent here is well expressed in *Whitfield* v. *Hanges* (8th Cir.), 222 Fed. 745, 748:

> "An alien, as well as a citizen, is protected by the prohibition of deprivation of life, liberty or property without due process and the equal protection of the law. This principal is universal. It applies to all

persons within the territorial jurisdiction of the United States without regard to any differences of race, or color, or nationality. *Yick Wo* v. *Hopkins*, 118 U. S. 356, 369, 6 S. Ct. 1064, 30 L. Ed. 220."

CONCLUSION.

In is submitted that for the reasons stated, the writ of certiorari should be granted.

Respectfully submitted,

FRANK R. REID,
Attorney for Anthony Volpe, Petitioner.

JOHN ELLIOTT BYRNE,
Of Counsel.

MAR 24 19
CHARLES ELMORE

No. 724

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1932.

UNITED STATES OF AMERICA ex rel.,
ANTHONY VOLPE,
Petitioner,

vs.

S. D. SMITH, District Director of Immigration,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITIONER'S REPLY BRIEF TO SUGGESTION OF ABATEMENT.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

REPLY TO SUGGESTION OF ABATEMENT.

Comes now Anthony Volpe, petitioner, by his attorney, and respectfully makes the following reply to the suggestion of abatement herein:

We take issue with and deny, on information and belief, the statement that Smith ceased to hold "office" as District Director of Immigration in January, 1932. Counsel for petitioner were informed on March 21, 1933, by the United States Attorney's office at Chicago that S. D. Smith is still an officer and employee of the Bureau of Immigration, and still holds and uses the title of District Director of Immigration. Surely petitioner's counsel are not chargeable with knowledge of Mr. Smith's exact title.

under penalty of abatement, when government counsel themselves differ on the matter.

In addition, the basic statement in the suggestion of abatement is contradictory and repugnant to the jurisdictional statement in respondent's Petition for Rehearing in the Circuit Court of Appeals. The suggestion of abatement states that

> "We are advised by the Department of Labor that Smith ceased to hold office as District Director of Immigration in January, 1932, and that he was succeeded by C. Alfred Palmer, who was appointed January 14, 1932, entered upon the duties of the office February 1, 1932, and took the oath of office March 3, 1932."

Contradictory to this is the fact that on July 19, 1932, the United States attorney at Chicago filed in the appeal in this matter in the Circuit Court of Appeals a petition for rehearing, beginning with the following statement:

> "Comes now S. D. Smith, District Director of Immigration, by George E. Q. Johnson, United States attorney, and presents this his petition for rehearing of the above entitled cause and in support of his petition respectfully shows:"

Thus more than six months after Smith ceased (as claimed) to hold the title of District Director of Immigration, the government attorney filed a petition and brief claiming that Smith still held the title. This was a representation to the court and opposing counsel in July, 1932, that Smith then held the title. We submit, the government is now estopped from claiming abatement.

The abatement statute (Sec. 11, Act Feb. 13, 1925, c. 229, 43 Stat. 936, 941; 28 U. S. C. A. 780) is permissive merely, not mandatory. *Brown-Crummer Inv. Co.* v. *City of Florala*, 55 F. (2) 238, (D. C. Ala., J. Kennamer). Therefore it seems clear that the principles of estoppel and waiver are applicable.

In addition, we respectfully submit, Mr. Smith, the respondent, has not ceased to hold the office which caused him to be made a party to the suit. This office is that of immigration inspector, to which he has necessarily been appointed in accordance with the provisions of the Civil Service Acts (see Sec. 24, Act of Feb. 5, 1917, 8 U. S. C. A. 109). On information and belief we state that Smith now holds the office of immigration inspector. By failure to deny it, the suggestion of abatement in effect admits that Smith still holds that office. The words "District Director of Immigration" are merely a descriptive title adopted by the Department of Labor for its own convenience and to indicate apparently comparative ranking as an inspector. Regardless, however, of whether or not Mr. Smith still uses the title of District Director of Immigration, he still holds the same office, that of inspector. The title "District Director of Immigration" is not used in the statutes, so far as we have been able to find, unlike the offices of immigration inspector and commissioner of immigration, both of which are created by statute. (Sec. 24, Act Feb. 5, 1917, 8 U. S. C. A. 109.)

If, however, we assume for purpose of argument that Smith is no longer accorded the title of District Director of Immigration the government claim then seems to be in substance that Mr. Smith has been demoted or reduced in rank as an inspector and that this is cause for abatement. However, such demotion doubtless is a matter of internal departmental administration, of which petitioner and his attorneys in natural course would have no knowledge. It certainly could not have been contemplated by Congress in enacting the abatement statute, that litigants with the government should be required to keep themselves informed of the demotions and changes in rank of employees of the governmental departments on peril of having litiga-

should now be estopped from contending otherwise. We submit also that an extremely technical objection of this nature should not induce this court to forego decision of the questions involved which are of great importance not only to petitioner but many others in like situation, and which now by reason of conflicting decisions of the inferior courts, are causing confusion in the administration of the immigration laws.

Respectfully submitted,

FRANK R. REID,
Attorney for Petitioner.

JOHN ELLIOTT BYRNE,
Of Counsel.

March, 1933.

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CHARLES ELMORE

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SUPPLEMENTAL BRIEF FOR PETITIONER
On Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

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SUPPLEMENTAL BRIEF FOR PETITIONER
On Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

Petitioner's counsel in the brief in support of petition for a writ of certiorari have endeavored to present concisely the law tending to sustain petitioner's position. Counsel respectfully request that that brief be considered as petitioner's brief on the merits and file this supplemental brief in amplification of some of the concise sections of that original brief.

I.

Opinions of courts below.

The final opinion (of January 11, 1933) of the Circuit Court of Appeals is reported in 62 F. (2) 808.

The first opinion (that of June 21, 1932) of the Circuit Court of Appeals has not been reported. It is in the record at p. 169.

II.

Jurisdiction.

The judgment of the Circuit Court of Appeals sought to be reviewed was entered January 11, 1933. (R. 196.) A petition for rehearing was denied on February 1, 1933. (R. 197.)

The petition for certiorari was filed on February 23, 1933, and on March 27, 1933, an order was entered granting the petition for certiorari.

The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, Section 347, Title 28 U. S. C.

III.

Statement of the case.

We respectfully ask leave to refer to the statement of the case as set forth in pages 9 to 12 of our original brief.

Herein we feel it necessary to discuss some of the assertions in the majority opinion of the Court of Appeals in its statement of the evidence preceding the opinion proper. (R. 180-181.)

Statement of the Evidence in the Majority Opinion.

The majority opinion (in the second opinion of the court, that of January 11, 1933) has, we respectfully submit, misconstrued the record in stating that Volpe "fraudulently" sought and secured a naturalization decree from a state court. The majority said (R. 180):

> "He has never been naturalized as a citizen of the United States, although he fraudulently sought and

> secured a naturalization decree from a state court and a naturalization certificate from the clerk thereof. The state court decree, however, was promptly revoked upon the application of the United States upon a threatened charge of perjury, and the certificate was voluntarily surrendered by him."

The only evidence on this point is that of Volpe (R. 22) who testified that Mr. Schlottfeldt, the naturalization examiner, told Volpe he wanted to cancel the naturalization papers: that Volpe replied, "I got those papers from Judge David in good faith"; that Schlottfeldt said that if Volpe got a lawyer and went to court he would hold him for perjury; that Volpe said, "I don't know what I perjured but I will do what you want and apply for papers again." This testimony was brought forth by the examination of the presiding inspector at the hearing in the presence of Assistant U. S. Attorney Healy. This testimony was never contradicted by Mr. Schlottfeldt. Certainly there was no showing of fraud here.

Judge Alschuler correctly states on page 10 (R. 189) of his dissenting opinion, "It (the record) does not disclose the actual ground for taking back the papers, or vacating the state court judgment granting him citizenship if in fact it ever was vacated."

The majority opinion seems to overlook the ruling of law that the burden of proof of alienage is on the government. *Bilokumsky* v. *Tod*, 263 U. S. 149; 44 S. C. 54, 68 L. Ed. 221. There is only a mere suggestion in the record that Volpe's naturalization decree was "cancelled" but no showing at all approaching the dignity of proof. The government relied on the interrogative statement by the presiding inspector that there was a naturalization file showing that the "order admitting Volpe to citizenship was set aside and the certificate issued to him cancelled." (R. 23.) In what court, if any, for what cause, and upon what plead-

ing or evidence, is not indicated. Certainly the admitted issuance of a naturalization decree to Volpe is not overcome by the suggestion mentioned and this indefinite proof by officers having it within their power to produce the court records and upon whom the law places the burden of such production, does not constitute proof of fraud or even of cancellation, in any proper sense of the word.

We respectfully submit also that the majority opinion herein further misapprehends the record in the statement that when entering at Key West, Volpe falsely stated that he was a naturalized citizen and that his naturalization certificate was in Chicago, and that after this statement was made the inspector examined him no further. Volpe and several members of his party testified that he did not make the false representation of citizenship when entering at Key West. Against this is only the indefinite and incredible testimony of Inspector Phillips to the contrary. In addition the testimony of Inspector Phillips is that of an interested witness produced not at the first hearing but as a make-weight in the reopened hearing. Inspector Phillips claimed that he recognized Volpe personally distinctly as well as the details of his conversation with Volpe almost three years before, notwithstanding that he had in the meantime examined some 20,000 to 30,000 entrants. This testimony as noted by Judge Alschuler is incredible. Inspector Phillips' memory is evidently far from being as perfect as he claims. In addition to the circumstances noted by Judge Alschuler that Mr. Phillips could not describe any of the other members of Volpe's party or his conversation with them, he was unable to recall at the hearing the name of the presiding Inspector Mr. Ellefson with whom he had spent a large part of his time for the few days immediately preceding the testimony at Chicago. (R. 108.)

The statement in the majority opinion that appellant admitted he had been arrested many times (R. 59), is literally accurate but we suggest that if the fact of arrests be considered material, appellant should be given the benefit of an additional statement that he was never convicted of any offense other than the counterfeiting charge. No evidence was introduced at the hearing justifying these unjust arrests.

In addition the Federal courts of review have disapproved attempts to show bad character by proof of fruitless arrests. See *Smith* v. *U. S.*, 161 U. S. 85, 16 S. C. 483; *Glover* v. *U. S.*, 147 Fed. 426.

Judge Alschuler correctly remarks (R. 187) that "there is nothing in the record to show that they (the arrests) had the remotest bearing on his right to re-enter or to remain here."

IV.

Specification of errors.

We respectfully ask leave to refer to the specification of errors as set forth at pages 12-13 of our original brief.

V.

ARGUMENT.

(1) Error in the decision that petitioner was deportable for conviction in the United States of crime before re-entry.

Supplementing the authorities cited in our original brief (pages 15 to 20 thereof), we respectfully refer to the case of *Wong Yow* v. *Weedin*, 33 F. (2) 377 (9th Cir.). In that case Wong Yow was a Chinese born in China who had lived in the United States as a Chinese merchant. He visited China in 1909 and married his first wife. Thereafter returning to the United States he married a second wife in 1915 in Oregon, although his first wife was still living in China and not divorced. In 1927 accompanied by the second wife he again visited China. The second wife died there and Wong Yow returned to the United States bringing with him the first wife. He was ordered deported on the ground that he admitted the commission of a crime involving moral turpitude, "to-wit, bigamy, prior to entry into the United States."

The Court said at pages 378-379:

> "And it has been repeatedly held that for certain purposes, including the running of the statute of limitations, where an alien has been domiciled in the United States for a period, and, having departed therefrom, again returns, the date of his return may be taken as the date of his 'entry.' *Lewis* v. *Frick*, 233 U. S. 291, 34 S. Ct. 488, 58 L. Ed. 967; *Morini* v. *United States* C. C. A.), 21 F. (2d) 1004; *Weedin* v. *Tayokichi Yamada* (C. C. A.) 4 F. (2d) 455; *Ex parte Parianos* (C. C. A.), 23 F. (2d) 918.
>
> While in some respects the Yamada case is closely analogous, the precise question here presented was not involved. And manifestly, if we assume that the return of appellant, a Chinese merchant lawfully domiciled here under treaty provisions, from a visit to his

country, is in law the 'entry' of an 'alien' under the Immigration Act, and then apply the act literally, results incongruous, if not absurd, ensue. All other facts being the same, had he not made this visit, he would not have been deportable upon his admission of the second marriage. In that case he would be subject to deportation only after a 'conviction' upon a charge of bigamy, and upon the happening of that contingency he would still have the two possible avenues of escape from deportation afforded by a recommendation of the trial judge and executive pardon; whereas, under the government's construction of the act, though he committed the offense within this country, he need not be 'convicted,' and he cannot invoke the protection of either judicial recommendation or executive clemency. See *Weedin* v. *Hempel* (C. C. A.), 28 F. (2d) 603.

'Nothing is better settled than that statutes should receive a sensible construction, such as will effectuate the legislative intention, and, if possible, so as to avoid an unjust or absurd conclusion.' *Lau Ow Bew* v. *United States*, 144 U. S. 47, 59, 12 S. Ct. 517, 520 (36 L. Ed. 340). Plainly, by the section under consideration, Congress intended to group all aliens deportable for the commission of a crime, into two classes, and the more reasonable view is that the classification was made with reference to the place where the crime was committed, whether in or out of this country. Such in plain language is the statutory characterization of the first class; the phrase being, 'conviction in this country of a crime.' True, when it comes to the second class, the phrase used is, 'prior to entry'; but we are inclined to think that Congress, probably having in mind only a single entry, used the phrase as synonymous with 'out of this country.' Unless that view be taken, the language leads to confusion. For example, under the government's construction, appellant's case falls within both classes. The offense with which he is charged was committed 'in this country,' and it was also committed 'prior to entry,' if for the purposes of the provision his last return be deemed an 'entry.' The commission of an offense entails radically different consequences, depending on where it was committed. In case it was committed in this country, de-

portation is subject to a statute of limitations, is conditioned upon 'conviction,' and may be defeated by either judicial recommendation or executive clemency, whereas, if committed out of this country, 'conviction' is not requisite, nor can resort be had to judicial recommendation or pardon.

Holding as we do that appellant's case falls within the first class, we necessarily conclude that the order of deportation is against the law, and accordingly the judgment below will be reversed, with directions to grant the writ."

(2) The majority opinion as to the false statement construction of the statute seems erroneous.

The reasoning of the majority opinion of the Court of Appeals herein is, we respectfully suggest, devoted not so much to determining what the intention of Congress was in enacting this legislation, but what such intention should have been, as viewed by the majority of the Court. The majority opinion states that aliens entering (re-entering) the United States are subject to inspection. With this statement we agree. However, the majority opinion then states that no alien can lawfully enter except as he meets the physicial, educational and moral requirements which Congress has seen fit to prescribe, in other words, a thorough and complete inspection as to all the statutory requirements. If this means that every alien is deportable to whom the inspector does not give a thorough and complete inspection as to all statutory requirements, we respectfully disagree. The inspector in his own discretion determines the extent of inspection. Evidently Inspector Phillips customarily inspected aliens re-entering from Cuba, only as to identification of person, establishment of United States domicile and return from temporary visit. He said (R. 111) as noted in our original brief:

"If I am positively satisfied that person is what he claims to be, he will be admitted."

This statement of Inspector Phillips seems justified by the rules of the Bureau of Immigration and by the applicable decisions of the courts, thus, Par. 2 of Rule 3, Subdn. I, of Immigration Laws and Rules of March 1, 1927, provides (among other things):

> "That any alien who establishes that he has been previously lawfully admitted to the United States and is returning from a temporary visit of not more than six months to Canada, Newfoundland, St. Pierre Huguelin, Bermuda, Mexico, Cuba, and other islands included in the Bahama and Greater Antilles groups shall be permitted to enter the United States without a passport, an immigration visa, or a permit to re-enter."

Rule 1, Sub. K, Par. 1, of the Immigration Rules of March 1, provides:

> "The head tax shall not be levied in respect of the following classes of aliens: * * *
>
> (g) Aliens lawfully admitted and having a bona fide residence in the United States who, without relinquishing such residence, visit Canada, Newfoundland, Cuba, or Mexico for a temporary period in no instance exceeding six months."

Also (as noted in our original brief) the Court of Appeals, 2nd Circuit, in *North German Lloyd* v. *Elting*, 48 F. (2) 547, 548, said:

> "If the alien was, as he claimed to be, returning to a United States domicile, he was not in an excluded class, but was absolutely entitled to enter."

In *Natali* v. *Day*, 45 F. (2) 112 (2d Cir.) the majority said at page 113:

> "Certainly, identification of aliens, if nothing more, is vital to the enforcement of the immigration laws and without inspection at the border any proper administration would be impossible."

Even the decision in *Ex parte Saadi*, 26 F. (2) 458 (9th Cir.) states at page 459:

> "The appellant, not having secured the (return) permit, inspection in his case was the official ascertainment of facts upon which depended his right to re-enter the United States, and it involved, at the very least, the determination of the question whether he had theretofore been lawfully domiciled in the United States, and whether he had temporarily gone into a foreign country with the intention to return."

It therefore follows, we respectfully submit, that the assumption in the majority opinion in the case at bar that Inspector Phillips was prevented from further inspection of Volpe by the alleged false statement, is not a correct assumption. This, for at least two reasons: (1) if Volpe had truthfully described his status (as he claims he did) to Inspector Phillips, the latter would not have given Volpe any further or additional inspection than that actually given (b) the government neither proved nor attempted to prove that Inspector Phillips failed to inspect Volpe as to "physical, educational and moral requirements."

We believe that this law is correctly interpreted and analyzed in *Ex parte Gouthro*, 296 Fed. 506 (D. C.), the opinion in which was on appeal approved and adopted by the Court of Appeals of the Sixth Circuit, 8 F. (2) 1023. The pertinent portion of that opinion is quoted by Judge Alschuler herein (R. 192) and for brevity we respectfully ask leave to refer thereto and to have this Court consider said quotation as set forth herein.

As heretofore stated, no contention is made or attempted by us justifying the making of false statements by aliens when entering the United States. However, we respectfully suggest, that the majority opinion is in error in appearing to assume that, since truth is desirable, punishment for a departure therefrom must be read into the statute by

including the words "false statement" within the meaning of the words "without inspection."

The rule so concisely stated by this Court in *Pirie* v. *Chicago T. & T. Co.*, 182 U. S. 438, 21 S. C. 906, 912, seems applicable here:

> "No mere omission, no mere failure to provide for contingencies, which it may seem wise to have specifically provided for, justify any judicial addition to the language of the statute."

In another case in considering some provisions of the Internal Revenue laws this Court recently laid down the rule governing situations such as this. In *Iselin* v. *U. S.*, 270 U. S. 245, 46 S. C. 248, 250, the Court said at page 250:

> "The statute is evidently drawn with care. Its language is plain and unambiguous. What the Government asks is not a construction of a statute, but, in effect, an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope. To supply omissions transcends the judicial function. Compare *United States* v. *Weitzel*, 246 U. S. 533, 543; *Peoria* v. *Pekin Union Ry. Co.* v. *United States*, 263 U. S. 528, 534, 535."

The present case is even stronger for appellant than was the *Iselin case*. There the Court felt that the failure to have the statute cover the situation under consideration, was an inadvertence of Congress. Here it affirmatively appears that Congress did not intend to cover appellant's case by the law. (See pp. 26-27 of original brief.)

In another recent case, of desired assumption of power by an administrative department, the Court again refused to extend statutory language beyond its plain meaning. In *Federal Trade Commission* v. *Raladam Co.*, 283 U. S. 643, 649, 51 S. Ct. Rep. 587, 590, the Court said:

> "Official powers cannot be extended beyond the terms and necessary implications of the grant. If broader

> powers be desirable they must be conferred by Congress. They cannot be merely assumed by administrative officers; nor can they be created by the courts in the proper exercise of their judicial functions."

No cogent reason has been suggested by opposing counsel why the plain meaning of the words "without inspection" should not be adopted by the Courts. If Congress had intended to authorize deportation of one who made a false statement in entering, that body certainly would have said so. A simple clause, such as "who enters by means of a false statement" or "who makes a false statement in entering" would have expressed the Government's contention without difficulty or complexity. The omission of any such language from the law certainly was intentional on the part of the legislature. To hold otherwise, is to hold that Congress preferred to express itself by indirection rather than by direct statement and to impose upon the law the laborious and illogical circumlocution here contended for, viz., "who enters by means of false and misleading statements thereby entering without inspection." To put the situation mildly, this is a most uncertain and doubtful interpretation of the law and falls within the language of *Brown* v. *Zurbrick*, 45 F. (2) 931 (6th Cir.). Here the Court of Appeals, speaking of fact that deportation now means lifelong exile, said:

> "Whether, in view of this change in the results of a deportation order, the courts will construe more liberally the due process rights of a resident alien, is a question that will eventually call for consideration; here it is enough to say that, in applying the supposed statutory grounds of deportation to this alien, long rightfully domiciled here, the application must be clear, and cannot rest on doubtful interpretation."

(3) The government did not sustain the burden of proof to establish alienage of petitioner.

As heretofore noted, we respectfully suggest that the majority opinion of the Court of Appeals herein has misapprehended the evidence, resulting in its statement that Volpe "fraudulently" secured a naturalization decree. As noted in Judge Alschuler's opinion (R. 189) there was no proof of perjury or any other fraud in this connection.

We submit as strongly indicative of innocence on Volpe's part the fact that Mr. Schlottfeldt, at present the naturalization examiner in charge at Chicago, was not called as a witness to contradict Volpe's testimony regarding his naturalization case in 1920. Judge Alschuler justly remarks on the "protracted, repeated and microscopic investigation into his (Volpe's) life, for the purpose evident to me, of deporting him at all hazard." It therefore seems certain that if Volpe had committed any offense justifying cancellation of his naturalization judgment, Mr. Schlottfeldt would have produced proof thereof at the immigration hearing.

As noted in our original brief, although the records of the Circuit and Superior Courts of Cook County, Illinois, are in Chicago, no proof was attempted of cancellation of naturalization except the hearsay and interrogative statement of the inspector presiding at the hearing that, "the order admitting Antonio Volpe to citizenship was set aside and the certificate issued to him cancelled. Q. Is that correct?"

This statement does not say that the order was "set aside" by the court that entered it or indeed by any court, nor does it say by what officer or authority the certificate was "cancelled." In addition, of course, the statement does not describe any evidence, motion or order justifying

or supporting the hearsay conclusion of the inspector that the file showed that the order (judgment of naturalization) was set aside.

The reluctance of the government to produce proper proof of the claimed cancellation of Volpe's naturalization judgment is still more significant in view of the fact that such proof was necessary to the government's case in two respects, (a) to show alienage, and (b) to demonstrate falsity of the alleged representation to Inspector Phillips that Volpe was a naturalized citizen.

The rule is, of course, well established that failure of a party having the burden of proof, to produce evidence apparently within his power to produce, creates a presumption that such evidence if produced, would have been unfavorable to the party.

Lincoln Nat. L. Ins. Co. v. *Erickson*, 42 F. (2) 997, 1001.

Gulf, etc., R. Co. v. *Ellis*, 54 Fed. 481.

Hill v. *U. S.*, 234 Fed. 39.

Malouff v. *Pope*, 9 F. (2) 254.

Rather than produce the records of the Volpe naturalization proceedings or authentic copies thereof from the court in Chicago, the same city in which the immigration hearings were held, the immigration inspector made repeated efforts to induce appellant to say that he was a citizen of Italy and that his naturalization certificate had been cancelled. We quote for the information of the court:

Page 58 of the record (December 10, 1930):

"Q. Inasmuch as your father is a citizen of Italy, do you consider yourself also a citizen of Italy?

A. No, I wouldn't want to consider myself a citizen of Italy. I want to consider myself a citizen of the United States because my brothers are citizens.

Q. Under the Italian law, however, you are entitled to claim Italian citizenship, aren't you?

A. That I don't know."

(This examination was not in the presence of counsel.)

Page 60 of the record (December 10, 1930):

"Q. But your father is a citizen of Italy?

A. I don't know.

Q. But he has the first papers?

A. Yes, sir.

Q. But you take the citizenship of your father, don't you?

A. Well, I have a wife and children born here and I think I take the citizenship of the United States if I can have it.

Q. But under the law you could rightfully be considered a citizen of Italy, couldn't you?

A. I wouldn't want it.

Q. I will grant that you wouldn't want to be a citizen of Italy, but under the law you would be a citizen of Italy?"

(This examination was not in the presence of counsel.)

Page 21 of record (January 17, 1931):

"Q. Of what country are you a citizen?

A. Well, I asked my father, he says I am a citizen of Italy."

Page 22 of record (January 17, 1931):

"Q. Did you ever become a naturalized citizen of the United States?

A. Yes, sir, 1920, March 27.

Q. Are you still a citizen of the United States?

A. I have my first papers and I don't know, I applied for the second papers, already, January 6.

Q. What happened to your United States citizen papers that you did receive?

A. Well, the Chief Examiner, Mr. Fred Schlottfeldt, wrote me a letter and told me to bring in my papers, which I did. When I gave him the papers I asked Mr. Schlottfeldt what he wanted with the papers for, so he says, 'I want to cancel these papers,' and I said,

'Why do you want me to cancel these papers,' and I said, 'I got these papers from Judge David in good faith, I don't see why you want me to cancel these papers,' so he says, 'Well, if you don't cancel these papers I will have to hold you for perjury.' I said, 'Well, why do you want to hold me for perjury?' and he says, 'The best thing to cancel the papers because if you get a lawyer and go to court I will have to get you in court for perjury,' and I says, 'I don't know what I perjured,' but I gave him the papers and says, 'I will do what you want and apply for papers again. I was never convicted for anything.'

Inspector: The United States Naturalization file shows that one Antonio Volpe, petitioner 30179, was admitted to citizenship March 27, 1920, by Judge David, and on the following Saturday, April 3, 1920, the order admitting Antonio Volpe to citizenship was set aside and the certificate issued to him cancelled.

Q. Is that correct?

A. Well, I don't know that, I didn't know that they cancelled my papers.

Q. At that time that petition and application for citizenship under which you were granted citizenship was continued for further hearing, and it appears that you requested that your petition for naturalization be dismissed on March 28, 1924. Is that correct?

A. Well, that's the time that he asked me to sign the papers dismissed.

Q. Then you asked that your petition be dismissed at that time?

A. Well, I didn't know what else to do."

As shown by this record, appellant, although intelligent, is deficient in education and, of course, not versed in the law. He evidently did not consult counsel in the naturalization case, probably because of Mr. Schlottfeldt's warning above quoted not to do so.

Therefore, we respectfully submit, that the desire of the government to rely on confused statements of this comparatively illiterate man in preference to producing avail-

able court records, strongly indicates that such records would have been unfavorable.

We also respectfully submit that neither the indefinite above quoted hearsay statement of the presiding inspector that the naturalization order had been set aside nor the quoted confused statements of appellant furnish the necessary proof of alienage.

(4) The finding of the making of a false statement is not sustained by the evidence.

In our discussion of lack of proof of alienage, we called attention to the fact that there was no proper proof to establish that the naturalization judgment of 1920, had been legally cancelled, vacated or annulled, and, of course, such proof is necessary to demonstrate the falsity of the alleged statement by Volpe that he was a naturalized citizen.

In addition (assuming for purpose of discussion that entry without inspection includes entry with inspection involving false statement), certainly knowledge of the falsity of the statement by the maker would be essential and proof thereof would be necessary. In other words, a false statement innocently made would not subject the entrant to deportation. In the present case, the government did not attempt to make proof of knowledge. The only evidence is to the contrary.

Volpe testified (R. 23) that he did not know that "they cancelled my papers." He admitted that "he (the Naturalization Examiner) asked me to sign the papers dismissed." Apparently Volpe signed whatever the unnamed document presented to him by Mr. Schlottfeldt, but the record does not disclose that the document was used to

cause vacation of the judgment of naturalization, or that, if so used, Volpe had knowledge thereof.

In addition if our contention be sound (Sec. V, par. (2) of our original brief) that Volpe was subject to inspection only to establish United States domicile and return from a temporary absence in Cuba, any misstatement as to other matters would be immaterial and surely even the government's construction of the statute must concede at least that the misstatement must be material. Therefore we suggest that even were respondent's statutory construction to be preferred, nevertheless respondent's proof has entirely failed to show materiality of the alleged false statement.

The majority opinion of the Court of Appeals herein omits discussion of petitioner's contentions as to the insufficiency of the government's evidence, apparently on the ground that the reviewing court is not at liberty to weigh the evidence.

We respectfully submit that Inspector Phillips' testimony in its own nature and in view of the circumstances under which it was given, does not furnish "substantial evidentiary support" to the claim of false statement (J. Alschuler, R. 188), particularly in view of the contradiction thereof, directly by Volpe (R. 27, 55, 110), and Serritella (R. 34), and indirectly by Prignano (R. 31) and Pacelli (R. 37).

We respectfully submit that the consideration of testimony by the reviewing court to determine whether it affords support to the judgment, is an entirely different process than a mere weighing of the evidence. In *Security Life Ins. Co.* v. *Seeber*, 41 F. (2) 600, the Court of Appeals, 7th Circuit, so considered the evidence upon a conflict between two witnesses as to the time of mailing an insurance premium and reversed the judgment on the

ground that the testimony of the witness which was the basis for the jury's verdict was incredible and nullified by the testimony of one opposing witness and corroborating circumstances. The court says, at p. 601:

> "On the question of payment, the weight of the evidence is so overwhelmingly against the plaintiff, that we are of opinion that there should have been an instructed verdict on that point. *Chicago, M. & St. P. Ry.* v. *Coogan*, 271 U. S. 472, 478, 46 S. C. 564, 70 L. Ed. 1041."

One of the circumstances alluded to in our original brief (p. 33) we believe, is of sufficient importance to justify further explanation. Volpe's witnesses on all controverted matters were excluded from the hearing before testifying, being called in separately and examined without having heard the preceding testimony. (Prignano, R. 31; Serritella, R. 34; Pacelli, R. 36; Dr. Septimo de Cosola, R. 38; Ditchburne, R. 128.) This was in accordance with the long established custom of the Bureau of Immigration, at least in the Chicago office. However, when Inspector Phillips appeared, he was allowed to remain in the hearing room before testifying, without warning to counsel for Volpe that he was to testify or that his testimony was to be on the most vital elements of the case. In Mr. Phillips' presence before testifying, the presiding inspector called upon Volpe and identified him as the defendant in the case and as the Anthony Volpe named in Government Exhibit H who arrived from Cuba on June 24, 1928, at Key West, Fla. There was, of course, no reason for such identification of Volpe as these matters were not in dispute. However, Inspector Phillips then was called as a witness and stated he could identify Volpe by personal recollection. (R. 89.) That this irregular procedure was for the purpose of bolstering up Mr. Phillips' faulty recollection to have it appear extraordinarily good, is, we submit, a fair inference.

It should also be remembered that Mr. Phillips when testifying relied largely on the anonymous Government Exhibit H and also that doubtless he had had the benefit of reading the testimony given prior thereto by Volpe, Prignano, Serritella and Pacelli, which it was intended his testimony should overcome.

(5) The hearing was unfair.

The majority opinion of the Court of Appeals herein does not directly refer to our contentions in this respect. (Sec. VI of our original brief.) The majority opinion, however, seems to lend approval to some of the immaterial matters included in the record by remarking that petitioner admitted he had been arrested many times. In view of the fact that none of these arrests resulted in conviction, their immateriality seems apparent.

In contrast with the forcing of evidence of arrests into the record and of Volpe's supposed connection with Capone, "the gang leader" (R. 30), and Jacob Guzik, "recently sentenced for income tax evasion" (R. 30), was the refusal to allow petitioner to make explanation of his plea of guilty to counterfeiting, because of the fact that after a long trial, the jury disagreed and Mr. Volpe's limited finances would not carry him through a second trial, together with the fact that the trial judge (now deceased) indicated he would (as he did) impose only a thirty day sentence upon a plea of guilty. (R. 40-42.)

In addition the refusal of the government to produce material witnesses and documents as to which hearsay oral testimony was relied upon, rendered the hearing legally unfair.

Inspector Phillips claims an alien manifest was made in connection with the landing of the Volpe party at Key

West. He claims that he recalls Volpe did not state there was a question of cancellation of naturalization, because had Volpe done so Phillips would have placed his name on the alien manifest. (R. 99.) Clearly the alien manifest should have been produced as part of the records in the case, for the information of appellant's counsel and use in cross-examining Mr. Phillips. The presiding inspector flatly refused to produce the alien manifest at appellant's request. (R. 117.)

The hearsay statements of Morgan were used to bolster up the case against appellant and he should have been produced as a witness. (R. 103.) Phillips also claims he first received the citizen manifest and the alien manifest (as yet unseen by appellant's counsel) from Morgan. (R. 92.) If Morgan prepared these manifests or was present at their preparation, he knows whether Volpe concealed or disclosed the facts regarding his naturalization status and could settle the conflict between Phillips on the one hand and Volpe and his witnesses on the other. Also Morgan was present at the landing field when the plane arrived and doubtless could throw much light on what happened there during the inspection of Volpe. (R. 109.) Certainly he should have been produced for cross-examination.

> "The interests of truth clearly demanded cross-examination, and it should have been invited, not evaded." *Maltez* v. *Nagle*, 27 F. (2) 835, 837 (9th Cir.).

Likewise *Wong Yuen* v. *Prentis*, 234 Fed. 28 (7th Cir.) was entirely disregarded. The Court said at p. 30:

> "Where the issue is far less grave than the right to reside in this country of a human being claiming to be a citizen thereof, witnesses are frequently and properly brought long distances and at much expense to testify. The use by the government of *ex parte* state-

ments of persons whose oral testimony would have been conveniently, readily and inexpensively available might bear on the fairness of an administrative hearing such as this."

CONCLUSION.

It is submitted that the judgments of the Court of Appeals and of the District Court herein should be reversed.

Respectfully submitted,

FRANK R. REID,
Attorney for Petitioner.

JOHN ELLIOTT BYRNE,
Of Counsel.

In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 724

UNITED STATES OF AMERICA EX REL. ANTHONY VOLPE, petitioner

v.

S. D. SMITH, DISTRICT DIRECTOR OF IMMIGRATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

SUGGESTION OF ABATEMENT

Comes now the Solicitor General and suggests to the Court that this action has abated.

This suit was commenced by the filing on March 19, 1931, of a petition for a writ of habeas corpus in the District Court of the United States for the Northern District of Illinois, which alleged that Volpe, petitioner herein, was being illegally restrained of his liberty by Smith, the respondent herein, under the pretended authority of a warrant of deportation. (R. 2–7.) On the same day an order was entered by the District Court allowing the writ and directing that petitioner be released upon the filing of an appearance bond. (R. 8.)

The writ when issued was directed to Smith and was personally served upon him (R. 9) and on May 4, 1931, he filed a return in which he justified his detention of petitioner under and by virtue of the warrant of deportation (R. 10). After a hearing, the District Court ordered "that the petition for writ of habeas corpus be dismissed and the relator, Anthony Volpe, be remanded to the custody of the respondent, S. D. Smith, District Director of Immigration for deportation to Italy." (R. 155.) On June 15, 1931, the District Court allowed an appeal to the Circuit Court of Appeals for the Seventh Circuit, and admitted the petitioner to bail during the pendency of the appeal. (R. 163.) On June 21, 1932, the Circuit Court of Appeals rendered a decision in which it directed that the judgment of the District Court be reversed and the petitioner discharged (R. 169–178), but on October 29, 1932, it granted a petition by the Government for rehearing (R. 179), and on January 11, 1933, it filed an opinion and judgment affirming the order of the District Court (R. 179–186, 196). On February 1, 1933, it denied an application for rehearing filed on behalf of the petitioner. (R. 197.)

We are advised by the Department of Labor that Smith ceased to hold office as District Director of Immigration [1] in January, 1932, and that he was

[1] The Department of Labor informs us that District Directors of Immigration are appointed under authority of Sections 23 and 24 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 892, 893.

succeeded by C. Alfred Palmer, who was appointed January 14, 1932, entered upon the duties of the office February 1, 1932, and took the oath of office March 3, 1932.

The record does not show any substitution of Palmer for Smith, and we are advised by the United States Attorney that no substitution was made in the Circuit Court of Appeals, where the case was pending when the change of officers occurred.

Under Section 11 (a) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (U. S. C., Title 28, Sec. 780), the time for substituting Palmer has long since expired, as that section permits the continuance of an action against the successor in office only where a satisfactory showing of the need for such continuance is made "within six months after [the predecessor's] death or separation from the office."

The decisions of this Court are unanimous in holding that no substitution may be made after the period provided in Section 11 (a) and that failure to substitute within that time requires the abatement of the action. See *LeCrone* v. *McAdoo,* 253 U. S. 217, 219; *United States ex rel. Claussen* v. *Curran,* 276 U. S. 590, 591; *Matheus* v. *United States ex rel. Cunningham,* 282 U. S. 802.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

W. MARVIN SMITH,
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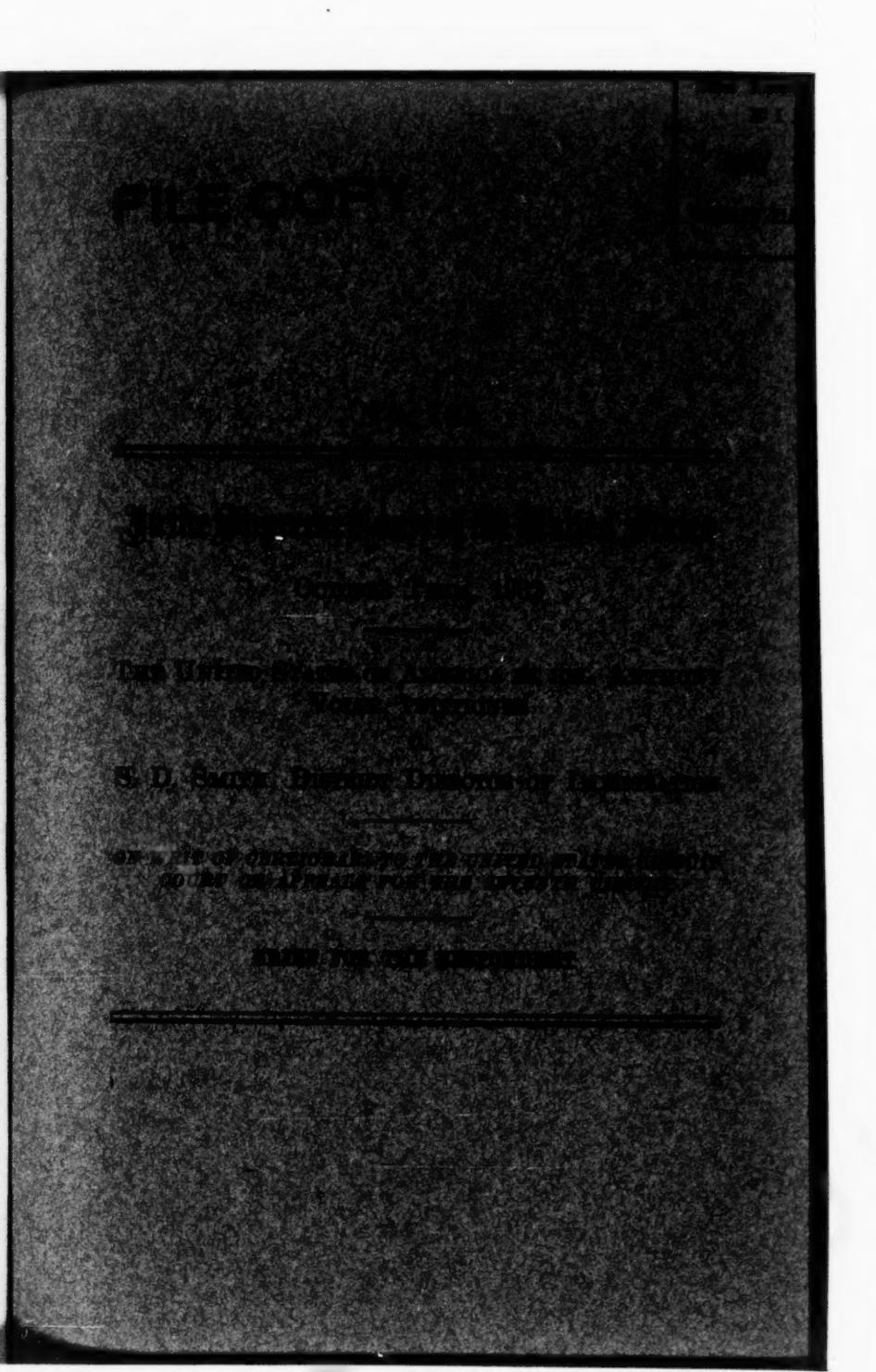
MARCH, 1933.

U. S. GOVERNMENT PRINTING OFFICE: 1933



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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 724

THE UNITED STATES OF AMERICA EX REL. ANTHONY Volpe, petitioner

v.

S. D. SMITH, DISTRICT DIRECTOR OF IMMIGRATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

Neither the oral opinion of the District Court (R. 147–154) nor the first opinion of the Circuit Court of Appeals (R. 169–178) has been reported. The majority (R. 180–186) and dissenting (186–196) opinions of that court, rendered on rehearing, are reported in 62 F. (2d) 808.

JURISDICTION

The judgment of the court below was entered January 11, 1933 (R. 196). On February 1, 1933, a petition for rehearing was denied (R. 197).

The petition for certiorari was filed February 24, 1933, and granted March 27, 1933 (R. 200). Jurisdiction to issue the writ is conferred upon this Court by Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925.

In response to the petition for the writ in this case we suggested abatement of the proceeding. In Appendix B to this brief we have brought together for the convenience of the Court the considerations which seem to us material upon this question. The question is also discussed in petitioner's brief in reply to the suggestion of abatement. So far as the Government is concerned, we should be glad to have the Court conclude that this case may be considered and decided upon its merits.

QUESTIONS PRESENTED

1. Whether the Circuit Court of Appeals erred in sustaining both of the grounds set forth in the warrant of deportation, the District Court having rejected one of those grounds, and the respondent not having taken a cross appeal.

2. Whether an alien who is convicted in this country of a crime involving moral turpitude prior to his last entry may be deported.

3. Whether the petitioner had been convicted of a crime involving moral turpitude.

4. Whether an alien who is permitted to enter this country upon his false statement that he is an American citizen thereby enters without inspection.

5. Whether there was sufficient proof of petitioner's alienage.

6. Whether petitioner was accorded a fair hearing by the immigration authorities.

STATUTES AND REGULATIONS INVOLVED

The pertinent provisions of the Immigration Act of 1917 will be found in Appendix A, pp. 36–37, *infra*.

STATEMENT

Petitioner, who is now about 42 years old, was born in the Argentine Republic of Italian parents (R. 21). When he was fourteen he was taken to Italy, where he was registered as an Italian citizen (R. 21, 49). On March 31, 1906, at the age of sixteen, he came to this country accompanied by his mother, two brothers and his sister, and was admitted as a citizen of Italy (R. 25, 62). He has since continued to reside here (R. 31). In 1915 he married (R. 16), and his family now consists of his wife and three children, all born in this country (R. 16).

On March 27, 1920, petitioner was admitted to citizenship by a judge of a State court in Illinois, but on April 3, 1920, seven days later, and apparently with the acquiescence of the petitioner, the order admitting him to citizenship was set aside and his certificate of naturalization canceled (R. 22–23). Thereafter the petitioner again took out first papers, and in January, 1931, applied for his second papers (R. 22).

On February 27, 1925, an indictment in 26 counts was returned against the petitioner and others in the District Court of the United States for the Northern District of Illinois. This indictment was based upon Sections 148, 150, 151, 219 and 37 of the Criminal Code, and charged the defendants with possessing, making and uttering counterfeit Government obligations with intent to defraud; with making and possessing plates designed for the printing of counterfeit Government obligations; with counterfeiting and possessing counterfeited postage stamps of the United States; and with conspiring to commit all of these various offenses (R. 63–81). After a trial, at which the jury disagreed (R. 129), petitioner entered a plea of guilty to the indictment and was sentenced to imprisonment in a county jail for a period of thirty days (R. 83–84).

In June, 1928, petitioner, together with a party of friends, went to Havana, Cuba (R. 55). They stayed there a few days, and on June 24, 1928, returned to this country by aeroplane, landing at Key West, Florida (R. 27). According to the testimony of the immigrant inspector who examined petitioner and his party, as supplemented by certain Government exhibits, petitioner stated that he was a naturalized citizen of the United States, and that he could not produce his certificate because it was in Chicago but did not disclose that his certificate of naturalization had been canceled (R. 90–91, 99. See also R. 27, 85–86, 133–

135). Being satisfied that petitioner was what he claimed to be, the inspector, after a brief examination, admitted him. (R. 91.) There is nothing in the record to indicate that petitioner informed the inspector of his conviction under the indictment referred to above.

Upon the basis of certain voluntary statements made by the petitioner upon examination by an immigrant inspector into his right to remain in this country (R. 48–61), a warrant for the arrest of petitioner was issued by the Department of Labor on December 11, 1930. This warrant charged petitioner with being unlawfully in this country on the ground that he had been convicted of a crime involving moral turpitude, i.e. possessing and passing counterfeit war savings stamps, prior to his entry from Cuba in the summer of 1928, and that he was not at the time of such entry in possession of an unexpired immigration visa (R. 13–14). He was taken into custody under this warrant but was shortly thereafter admitted to bail (R. 14). On January 3, 1931, he was accorded a hearing before an immigrant inspector, at which he was represented by counsel (R. 14–15). At this hearing, which was continued from time to time, a number of witnesses, including petitioner, were examined both by the inspector and by petitioner's counsel (R. 14–48). During this hearing the charge contained in the warrant of arrest was amended by a more complete summary of the offenses specified in the indict-

ment under which petitioner was convicted (R. 28), and an additional charge was made of entering this country on his return from Cuba by false and misleading statements, thereby entering without inspection (R. 28). No objection was made by petitioner to the amendment of the warrant or to the introduction of the additional charge. On January 21, 1931, the hearing was closed by the inspector with the reservation, however, that it was subject to be reopened at the call of the Government for the introduction of additional evidence, if necessary (R. 48). Prior to the conclusion of the hearing petitioner's counsel were advised by the inspector that a transcript of the hearing would be furnished them and that they would be given an opportunity to submit briefs (R. 47–48). Also, they were asked by the inspector whether they were of the opinion that their client had been accorded a fair hearing and one of them responded, "we think it has been entirely fair" (R. 48).

On February 25, 1931, a warrant of deportation was issued upon two of the grounds which were under consideration at the immigration hearing, i.e., that the petitioner entered in 1928 by means of false and misleading statements, thereby entering without inspection, and that he had been convicted of a crime involving moral turpitude prior to such entry (R. 7). Petitioner was taken into custody under this warrant and on March 19, 1931, filed a petition for writ of habeas corpus in the Dis-

trict Court of the United States for the Northern District of Illinois (R. 2–7). This petition attacked the order of deportation on a number of grounds, some of which are not now urged. On the same day that the petition was filed the writ issued and petitioner was released pending the proceedings in the District Court upon the bond which he had given to the immigration authorities (R. 8).

On March 31, 1931, prior to the filing of a return to the writ of habeas corpus, the hearing before the immigrant inspector was reopened at the direction of an Assistant Secretary of Labor and additional testimony was taken (R. 86–135). The bulk of this testimony was given by the inspector who examined petitioner and his party when they returned from Cuba and bore upon the charge that petitioner entered without inspection because of false and misleading statements as to his citizenship. Following this hearing another warrant of deportation was issued on April 28, 1931. This warrant was based upon the same grounds as the warrant of February 25, 1931, and superseded that warrant (R. 138–139). Thereafter a return to the writ of habeas corpus was filed (R. 10–12). After a hearing, at which testimony was introduced on behalf of the petitioner, which related, among other things, to the identification of petitioner at the immigration hearing by the inspector who admitted him on his return from Cuba (R. 139–146), and which was followed

by testimony for the Government on this subject (R. 146), the District Court dismissed the writ of habeas corpus and directed that the petitioner be remanded to the custody of the respondent for deportation to Italy (R. 155). In an oral opinion the court held that petitioner could not be deported on the charge that he had been convicted of a crime involving moral turpitude prior to his entry from Cuba in 1928, because the applicable portion of Section 19 of the Immigration Act of 1917 referred only to crimes committed abroad and not in this country, but that he was deportable on the charge that he had entered in 1928 by means of false and misleading statements, thereby entering without inspection. (R. 147–151.)

An appeal was allowed by the District Court to the Circuit Court of Appeals for the Seventh Circuit (R. 156–163). In its order allowing the appeal the court directed that the appeal should operate as a supersedeas and that the petitioner should be admitted to bail during the pendency of the appeal. In an opinion rendered June 21, 1932, the Circuit Court of Appeals held that petitioner was not deportable on either of the grounds stated in the warrant of deportation (R. 169–178). Thereafter the Government filed a petition for rehearing which was granted (R. 178–179). On January 11, 1933, the court filed a second opinion in which it held that both of the grounds for deportation stated in the warrant were valid and af-

firmed the order of the District Court (R. 180–186, 196). One judge dissented (R. 186–196). Thereafter the court denied a petition for rehearing filed by the petitioner. (R. 197.)

SUMMARY OF ARGUMENT

Petitioner was deportable as an alien convicted of a crime involving moral turpitude "prior to entry" under Section 19 of the Immigration Act of 1917. Petitioner's entry from Cuba in 1928 was an "entry" as previously defined by this Court. The pertinent provision of Section 19 is complementary to the provisions of Section 3 of the Act dealing with grounds for exclusion. Petitioner was excludable under Section 3 and having avoided inspection by falsely claiming to be an American citizen he may be deported. The provision in Section 19 for the deportation, within a limited period, of aliens who commit crimes after entry does not affect the proper construction of the portion of the statute involved here. The statute clearly makes a distinction between aliens who commit crimes in this country and remain here and those who are excludable and therefore are not entitled to be here at all. There is no occasion for distortion of the plain language of the statute and under it petitioner was clearly deportable.

The petitioner was convicted of counterfeiting Government obligations, and that is a crime involving moral turpitude.

By falsely representing himself to be a citizen of the United States when he entered from Cuba in 1928, petitioner avoided inspection as an alien, and thus defeated any inquiry to determine whether he was excludable. Like other aliens he was subject to inspection, and having avoided it by false statements he was also deportable as an alien who entered "without inspection" under Section 19 of the Immigration Act of 1917. Neither previous domicile in the United States nor the fact that he was not required to have a visa or permit to reenter relieved him from the necessity of inspection.

Even if the question were open here, the finding that petitioner was an alien is not open to attack. The fact that he was an alien was sufficiently established by his admissions.

Within settled rules for the determination of the fairness of administrative hearings, an examination of the record conclusively shows that petitioner had a fair hearing and that there was no denial of due process.

ARGUMENT

The District Court dismissed the writ of habeas corpus and remanded the petitioner for deportation because he had entered without inspection, rejecting the other ground stated in the warrant of deportation that petitioner had been convicted of a crime involving moral turpitude prior to entry (R. 147–155). The Circuit Court of Appeals sus-

tained the warrant upon both grounds (R. 180–186). No cross appeal by the Government was necessary to sustain the dismissal of the writ upon a ground rejected in the District Court (see *Story Parchment Co.* v. *Paterson,* 282 U.S. 555, 560; *Smith* v. *Whitney,* 116 U.S. 167, 175), and the question whether petitioner was lawfully held for deportation upon either of the charges contained in the warrant is, therefore, properly before this Court.

I

PETITIONER WAS LAWFULLY HELD FOR DEPORTATION BECAUSE OF HIS CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE PRIOR TO ENTRY INTO THE UNITED STATES

Section 19 of the Immigration Act of 1917, 39 Stat. 874, 889–890 (U.S.C., Title 8, Sec. 155), provides in part:

> * * * any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; * * * shall, upon the warrant of the Secretary of Labor, be taken into custody and deported.

Some nineteen years after petitioner's original entry into the United States petitioner was convicted of a crime involving moral turpitude. He subsequently left the United States on a brief trip to Cuba, and upon his reentry into the United States, more than five years after his conviction, he was held for deportation upon the ground that

he had been convicted of a crime involving moral turpitude "prior to entry."

The language of the statute is very simple and very clear, and its possibilities of interpretation seem to have been exhausted by the decisions of this Court which have defined the word "entry." In *United States ex rel. Claussen* v. *Day*, 279 U.S. 398, 401, this Court defined the word "entry" as used in Section 19 of the Immigration Act of 1917, saying:

> The word "entry" by its own force implies a coming from outside. The context shows that in order that there be an entry within the meaning of the Act there must be an arrival from some foreign port or place.

And in *United States ex rel. Stapf* v. *Corsi*, 287 U.S. 129, 132, which construed the word "entering" as used in Section 14 of the Immigration Act of 1924, the Court said, with reference to its decision in the *Claussen case*:

> While that case construed Section 19 of the Act of February 5, 1917, and the time limitation on deportation therein contained, the decision as to what constitutes an entry is equally conclusive in construing other sections of the immigration law.

Applying this definition of the word "entry" to the provision of Section 19 here involved, it is clear that the petitioner was convicted of a crime involving moral turpitude "prior to entry" (that is,

prior to his entry from Cuba in 1928) and he was therefore lawfully held for deportation. There is nothing in the statute which forbids deportation because the crime was committed in the United States. Irrespective of his length of residence in the United States, the petitioner remained an alien, as defined in the Immigration Acts of 1917 and 1924 (Immigration Act of 1917, Sec. 1, 39 Stat. 874, U.S.C., Title 8, Sec. 173; Immigration Act of 1924, Sec. 28, c. 190, 43 Stat. 153, 168 (U.S.C., Title 8, Sec. 224), and upon his return from Cuba was subject to exclusion because he was a person who had been convicted of a crime involving moral turpitude. (Immigration Act of 1917, Sec. 3, 39 Stat. 874; U.S.C., Title 8, Sec. 136.) Having evaded inspection by claiming citizenship, petitioner was subject to deportation upon the same ground for which he should have been excluded. This is apparent upon a comparison of the applicable provisions of Section 19 of the Immigration Act of 1917 with the corresponding provisions of Section 3 of the same Act. Section 19, providing for the deportation of aliens convicted of crime prior to entry, complements the corresponding provisions of Section 3 requiring exclusion of all persons convicted of crimes involving moral turpitude. If these sections are thus construed as complementary one to the other, there can be no reason for distinctions predicated upon crimes committed abroad

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and crimes committed in this country. The test of exclusion is personal, and the place where the crime was committed makes the alien no less, or no more, desirable. Section 19 requires the deportation of any alien who was convicted prior to entry of a felony or other crime or misdemeanor involving moral turpitude. The definition of an "alien" in Section 1 was predicated upon the decision of this Court in *Lapina* v. *Williams*, 232 U.S. 78 (see S.Rep. 352, 64th Cong., 1st Sess., page 3), where it was held that the term "alien" applies to all aliens "irrespective of any qualification arising out of a previous residence or domicile in this country". See *Lewis* v. *Frick*, 233 U.S. 291, 297; *Bugajewitz* v. *Adams*, 228 U.S. 585. Thus it appears that the petitioner was an alien, subject to deportation notwithstanding his previous residence or domicile in this country, if at the time of his entry he had at any time been convicted of a crime involving moral turpitude. His exclusion upon his arrival in this country was required by the plain language of Section 3, and his admission was in violation of that section. His deportation, upon discovery of the fact that he had been illegally admitted, was required by the equally plain language of Section 19.

The fact that in another clause, dealing with deportation of aliens who remain continuously in this country, and not with their exclusion for crimes committed prior to entry or with their de-

portation after admission contrary to this requirement of exclusion, reference is made to crimes committed in the United States, seems to us to have no limiting effect upon the plain meaning of the complementary provisions contained in Section 3 and Section 19 relating to the exclusion and deportation of aliens who admit the commission of, or who have been convicted of, crimes "prior to entry."

The construction of the statute for which we contend, which was upheld by the court below, is supported by *Medich* v. *Burmaster*, 24 F. (2d) 57 (C.C.A. 8th); *Riley* v. *Howes*, 17 F. (2d) 647, 649 (Maine), reversed on other grounds, 24 F. (2d) 686 (C.C.A. 1st); *Gomes* v. *Tillinghast*, 37 F. (2d) 935 (Mass.). The following cases have reached a contrary conclusion: *Browne* v. *Zurbrick*, 45 F. (2d) 931, 933 (C.C.A. 6th); *United States ex rel. Consiglio* v. *Day*, 55 F. (2d) 228 (C.C.A. 2d); *Wilson* v. *Carr*, 41 F. (2d) 704, 706–707 (C.C.A. 9th)[1]; *Nagle* v. *Lim Foon*, 48 F. (2d) 51, 53–54 (C.C.A. 9th)[1]; *United States ex rel. Linklater* v.

[1] These cases would seem to be contrary to the previous decisions supporting the Government's position by the Circuit Court of Appeals for the Ninth Circuit in *Bendel* v. *Nagle*, 17 F. (2d) 719, 720, and *Weedin* v. *Yamada*, 4 F. (2d) 455. Attention is called, however, to the decisions of that court in the cases of *Wong Yow* v. *Weedin*, 33 F. (2d) 377, and *Ex parte Keizo Shibata*, 35 F. (2d) 636, where the court appears to have held that an alien may be deported where he has been *convicted* of a crime committed in this country prior to entry, but not where he has merely *ad-*

Commissioner of Immigration, 36 F. (2d) 239 (S.D.N.Y.). The primary basis of the latter decisions is that Section 19 of the Immigration Act of 1917 also provides for the deportation of an alien "sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after the entry of the alien into the United States." Accordingly it is concluded in these decisions that the provision here in question for deportation of aliens convicted of crimes prior to entry must have relation to the commission of crimes abroad. This view plainly overlooks the fact that these two provisions are not complementary. One deals with aliens who are entitled to admission when they enter the country and are to be deported for offenses committed after entry, having no relation to their right to enter the country. The other deals with aliens, who, having committed crimes prior to entry, have been admitted contrary to law and may therefore be deported. It was a very fair distinction for Congress to limit the right of

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mitted that he has committed such a crime. (Cf., however, *Ex parte Chin Chan On*, 32 F. (2d) 828, 829 (W.D.Wash.). But in a later case (*Masaichi Ono* v. *Carr*, 56 F. (2d) 772, 773) the Circuit Court of Appeals for the Ninth Circuit held, distinguishing the *Yamada* and *Shibata* cases, that an alien may be *excluded* under the corresponding provisions of Section 3 of the Immigration Act of 1917, where he admitted the commission of a crime in the United States prior to entry.

deportation in the former case by a statutory period of limitation, and in the latter case to predicate the right of deportation upon the fact that the alien was not entitled to be here at all if at any time prior to entry he had been convicted of a crime involving moral turpitude. This is the distinction which must be drawn if the plain words of the statute are given their ordinary meaning. The distinction is not so absurd and irrational as to constrain distortion of language. And we believe there is no warrant in this case for reading into one provision the language contained in the other. Presumably it was omitted because Congress intended the law to have different applications in different cases, and the courts may not defeat this express intention by reading both clauses as if their words were the same. Such a process is not interpretation. It is reading into plain and simple phrases of clear and certain meaning a limitation unexpressed and contrary to the sense of the statute.

Under the decision of this Court in the *Claussen case, supra,* there is no ground for conclusion that the word "entry" in the clause here under consideration means only an alien's original entry from abroad. Had Congress intended any such distinction it would be found in the simple language it employed to express its meaning. The decisions opposed to our view ignore this principle and seem to have been influenced by a desire to ameliorate

the harshness of the immigration laws, but this is not within the judicial province if Congress has clearly expressed its purpose. Cf. *Commissioner of Immigration* v. *Gottlieb*, 265 U.S. 310, 314; *Chung Fook* v. *White*, 264 U.S. 310, 314; *Bugajewitz* v. *Adams*, 228 U.S. 585, *supra*; *Zakonaite* v. *Wolf*, 226 U.S. 272; *Fong Yue Ting* v. *United States*, 149 U.S. 698; *Todaro* v. *Munster*, 62 F. (2d) 963 (C.C.A. 10th), certiorari denied, April 17, 1933, No. 773, October Term, 1932.

The fact that an alien commits a crime in this country and may not be deported because the statutory limitation has run does not confer the right to leave the country voluntarily and thereafter reenter without meeting the qualifications which must be met by those aliens who come here for the first time. The test of the right of entry is personal. The inquiry is whether the applicant has certain criminal tendencies. When or where he committed the disqualifying offenses is of no importance. The petitioner was subject to exclusion under the plain language of Section 3, and having evaded inspection, by claiming to be a citizen, he is subject to deportation under the same language employed in Section 19.

II

PETITIONER WAS CONVICTED OF A CRIME INVOLVING MORAL TURPITUDE

Petitioner contends that the offenses of which he was convicted were not crimes involving moral

turpitude. The opinions below did not discuss this question, it does not appear to have been covered by any specific assignment of error in the court below (R. 156–161, 162), and examination of the briefs filed on behalf of petitioner in that court discloses that the point was not there urged. Under these circumstances we do not believe that the question is properly before this Court, but if it is, we submit that petitioner's contention is wholly without merit.

The indictment returned against petitioner charged violations of Sections 148, 150, 151, 219, and 37 of the Criminal Code (U.S.C., Title 18, Secs. 262, 264, 265, 348, 88). It charged the petitioner and others with possessing, making, and uttering counterfeit Government obligations with intent to defraud; with making and possessing plates designed for the printing of counterfeit Government obligations; with counterfeiting and possessing counterfeited postage stamps of the United States; and with conspiring to commit these various offenses (R. 63–80). All of the offenses charged were felonies. In two of the statutes alleged to have been violated, Sections 148 and 151 of the Criminal Code, an "intent to defraud" is specifically made an element of the offense. Various counts of the indictment charged that the crimes were committed with such intent. Petitioner pleaded guilty and was sentenced to jail (R. 83–84).

It seems too clear for extended argument that the counterfeiting of Government obligations, and especially the commission of those crimes which involved an intent to defraud, were crimes involving moral turpitude. The following crimes have been so characterized: concealing assets from a trustee in bankruptcy (*United States ex rel. Medich* v. *Burmaster*, 24 F. (2d) 57, 58 (C.C.A. 8th), *supra;* issuing a check without sufficient funds (*United States ex rel. Portado* v. *Day*, 16 F. (2d) 328 (S.D.N.Y.)); encumbering mortgaged property with intent to defraud (*United States ex rel. Millard* v. *Tuttle*, 46 F. (2d) 342 (E.D.La.)). In *United States ex rel. Allessio* v. *Day*, 42 F. (2d) 217 (C.C.A. 2d), the court held, without discussion, that counterfeiting was a crime involving moral turpitude. Cases cited by petitioner holding that violations of the National Prohibition Act are not such crimes are obviously inapplicable.

III

PETITIONER WAS LAWFULLY HELD FOR DEPORTATION UPON THE GROUND THAT HE ENTERED WITHOUT INSPECTION WITHIN THE MEANING OF SECTION 19 OF THE IMMIGRATION ACT OF 1917

One of the grounds upon which petitioner was ordered deported was that he had "entered by means of false and misleading statements, thereby entering without inspection" (R. 138). Section 19 of the Immigration Act of 1917 authorizes the deportation, at any time within three years after entry, of any alien "who enters without inspection."

There was evidence that when the petitioner returned from Cuba in 1928 he stated to the immigration officer who examined him that he was a naturalized citizen of the United States and as a result of this statement was admitted as a citizen (R. 90–91). Thus he avoided inspection as an alien applying for admission. The record shows that at the time of his entry petitioner was not a citizen of the United States, his naturalization certificate having been cancelled some years before (R. 22–23). Both courts below held that the petitioner was deportable on the ground that he had entered without inspection (R. 151–153; 185–186).

Inspection of aliens is required to enable the immigrant inspectors to determine their admissibility, and proper record of entering aliens is essential to administration of the immigration laws. There is no provision in the statute for inspection or examination of United States citizens. When the fact of citizenship is established to the inspector's satisfaction, he has no right to submit the citizen to further inquiry. By falsely representing himself to be a citizen, the petitioner escaped the inspection which the statutes provide for aliens. He thus avoided inquiries regarding his conviction of crime which would have been made upon his examination as an alien seeking admission and which, if answered truthfully, would have resulted in his exclusion under Section 3 of the Immigration Act of 1917. Had he been inspected as an alien, other grounds of exclusion might have been developed.

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An alien who avoids inspection by falsely representing himself to be a citizen enters without inspection. *Ex parte Saadi,* 26 F. (2d) 458 (C.C.A. 9th), certiorari denied, *sub nom. Saadi* v. *Carr,* 278 U.S. 616; *Williams* v. *United States ex rel. Bougadis,* 186 Fed. 479 (C.C.A. 2d); *Ex parte Greaves,* 222 Fed. 157 (N.D.Cal.). The latter two cases arose under the Immigration Act of 1907, which did not specifically include entry without inspection as a ground of deportation, but it did require inspection of aliens as to their right to land and provided that "any alien who shall enter the United States in violation of law * * * shall be taken into custody and deported." (See Sections 16, 20, 24, Immigration Act of 1907, c. 1134, 34 Stat. 903, 904, 906.)

The petitioner apparently contends that the *Saadi* case was wrongly decided and relies on certain decisions involving misstatements by aliens in the course of their inspection. (Br. in Support, pp. 22–26.) Those cases are, however, readily distinguishable[2] and they do not reach the ques-

[2] *United States ex rel. Iorio* v. *Day,* 34 F. (2d) 920 (C.C.A. 2d), also cited by petitioner, may not lend itself readily to this distinction. In that case the alien in securing a visa from an American consul abroad falsely stated in his application that he had never been imprisoned, whereas in fact he had been imprisoned at least once for possessing liquor. He was ordered deported on the ground that he had "entered by means of false statements and without inspection." The court held that this ground was bad in law, pointing out that the statute did not make it a ground for

tion here. The misstatements made by the aliens involved did not prevent inspection. They were made in the course of inspection. The inspectors were not bound to believe the aliens and there was such an inspection as the immigration officers chose to give. Thus the true basis for seeking deportation in those cases was that the aliens had made false and misleading statements to the inspectors, but, as pointed out in *Ex parte Gouthro,* 296 Fed. 506, 512 (E.D.Mich.), affirmed *per curiam* 8 F. (2d) 1023 (C.C.A. 6th), that has not been made a ground for deportation. There is an obvious and substantial difference between misleading or false statements in the course of an inspection and an unfounded claim of citizenship which, being accepted, precludes inspection. That was the result of the false statements made by petitioner. We believe that his entry was without inspection quite as much as in the case of the alien in *Ex parte Callow,* 240 Fed. 212 (Colo.), who walked past the immigrant inspector unobserved.

Petitioner contends that he had an absolute right to reenter the United States from Cuba because he was returning to a previously established

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deportation for an alien to make a false oath upon his application for visa. There is some language in the decision which may, perhaps, be regarded as supporting the petitioner's contention, but since the decision apparently proceeded upon the defects in the charge, it should not be considered as a decision that false representation of citizenship does not constitute entry without inspection.

lawful domicile in the United States after a temporary absence, and, accordingly, that inspection in his case was unnecessary.

The Quota Law of 1924 was in effect at the time of petitioner's return from Cuba. This Act defines a "nonquota immigrant" as including, among others, "An immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad" (Sec. 4 of the Immigration Act of May 26, 1924, c. 190, 43 Stat. 153, 155; U.S.C., Title 8, Sec. 204). On his return to the United States such an immigrant is required to present an immigration visa stating that he is a nonquota immigrant (Sec. 13 (a), Immigration Act of 1924, 43 Stat. 161, 162 (U.S.C., Title 8, Sec. 213 (a)); Sec. 8, Immigration Act of 1924, 43 Stat. 157 (U.S.C., Title 8, Sec. 208)), unless he is exempted from this requirement by regulations authorized by the Act (Sec. 13 (b), Immigration Act of 1924, 43 Stat. 162; U.S.C., Title 8, Sec. 213 (b)). Under Executive Order 4476, promulgated July 12, 1926, (Paragraph I, subparagraphs (2), (3)) "aliens who have previously been admitted legally into the United States, have departed therefrom and returned within six months, not having proceeded to countries other than * * * Cuba [and certain other nearby countries], are not required to present passports, visas, or permits to reenter"; those going to countries other than those specifically named for temporary visits were permitted, in lieu of visas, to present permits to re-

enter issued pursuant to Section 10 of the Immigration Act of 1924 (43 Stat. 158, U.S.C., Title 8, Sec. 210). It is also provided by regulation that "Aliens lawfully admitted and having a bona fide residence in the United States, who, without relinquishing such residence, visit * * * Cuba [and certain other nearby countries] for a temporary period in no instance exceeding six months", shall be exempted from payment of a head tax. (Rule 1, subdivision K, paragraph (g), Immigration Rules of March 1, 1927.)

It is apparently upon the basis of the foregoing provisions of the statutes and regulations that petitioner rests his argument that he was entitled to return to the United States without inspection. It is clear, however, from the provisions of Sections 2(g), 10(f), and 13(a), 43 Stat. 153, 154, 159 (U.S.C., Title 8, Secs. 202, 210, 213), of the Immigration Act of 1924 that the various provisions with respect to visas or reentry permits do not render eligible for entry those aliens otherwise inadmissable. The possession of a visa or return permit does not absolutely entitle the alien to reenter the United States. He must still be entitled to entry under Section 3 of the Immigration Act of 1917. As Section 25 of the Immigration Act of 1924, c. 190, 43 Stat. 166, U.S.C., Title 8, Sec. 223, declares that the provisions of that Act are in addition to and not in substitution for the provisions of the immigration laws, and that an alien, although admissible under the provisions of that Act, shall

not be admitted to the United States if he is excluded by any provision of any other immigration law. If, for example, he has contracted a loathsome or contagious disease between the time of his departure and the date of his reentry, he is as much subject to exclusion as an alien who enters for the first time (*Fee Fuk Yuen* v. *White,* 273 Fed. 10 (C.C.A. 9th)). His visa or reentry permit does not protect him against exclusion. (*Ex parte Di Stephano,* 25 F. (2d) 902, 903 (Mass.), and cases cited; *United States ex rel. Georgas* v. *Day,* 43 F. (2d) 917 (C.C.A. 2d). See also *Elting* v. *North German Lloyd,* 287 U.S. 324, 328, 329; *Lloyd Sabaudo Societa* v. *Elting,* 287 U.S. 329, 341; *Ex parte Li Dick,* 174 Fed. 674, 681 (N.D.N.Y.). The issuance of a visa or permit does not estop the immigration authorities from contesting the alien's right of admission as an immigrant not subject to quota. (*United States ex rel. Lesto* v. *Day,* 21 F. (2d) 307 (C.C.A. 2d).) Accordingly, when the petitioner returned to the United States from Cuba, it is clear that he was subject to inspection and was required to be prepared to make a proper showing of all the facts necessary to establish his claim to admission. Cf. *United States ex rel. Stapf* v. *Corsi,* 287 U.S. 129, 133, *supra.*

The fact that visas or return permits are dispensed with where aliens visit nearby countries for periods of less than six months does not affect the necessity for inspection to determine whether the aliens may reenter.

Petitioner relies on *In re Wysback,* 292 Fed. 761 (Mass.) to establish that there was no necessity for his inspection. That decision was clearly erroneous for the reasons cogently stated in *United States ex rel. Natali* v. *Day,* 45 F. (2d) 112, 113; see also *Ex parte Fragoso,* 11 F (2d) 688 (S.D. Cal.).

Petitioner urges that the omission from the bill which became the Act of March 4, 1929 (c. 690, 45 Stat. 1551, Secs. 1 to 4, U.S.C., Sup. V, Title 8, Sections 180 to 180(d), of a provision for the deportation of aliens who make false representations to immigration officials, is an indication that Congress did not regard such conduct as petitioner's as a ground for exclusion or deportation. While inclusion of the provision omitted would undoubtedly have supplied the omission in the Immigration Acts recognized in the cases cited by petitioner, which hold that the making of false representations in connection with the inspection of an alien is not ground for exclusion or deportation, such a provision was quite unnecessary to permit deportation in a case like the present. The provisions of existing law authorizing the deportation of aliens who enter without inspection was entirely adequate to cover the petitioner's case. Examination of the report of the House Committee on Immigration and Naturalization (H.Rep. 2418, 70th Cong., 2d Sess., pp. 3–4) does not show that the Committee regarded existing provisions of law as not covering those who escape inspection by false statements.

We believe that both courts below correctly held that the petitioner had entered without inspection within the meaning of Section 19 of the Immigration Act of 1917, and he was, therefore, deportable upon that ground as well as upon the ground of his conviction of a crime involving moral turpitude prior to entry.

IV

PETITIONER'S ALIENAGE WAS SUFFICIENTLY ESTABLISHED

Petitioner contends that the Government failed to prove that he was an alien and complains because there was not introduced at the immigration hearing a copy of the order cancelling petitioner's certificate of naturalization. It is also suggested that if there was such an order it was void under the Act of June 29, 1906, c. 3592, Sec. 15, 34 Stat. 601, as amended (U.S.C., Title 8, Sec. 404).

We submit that the question is not properly before the Court. It was not raised in the petition for *habeas corpus* (R. 2–6) in the assignments of error in the court below (R. 156–162) and was not discussed in either of the opinions below. Even if it may be considered here, the point is without merit.

The order of deportation in this case recites that petitioner is an alien (R. 138). The decisions of this Court establish that this finding must be sustained if supported by any evidence. *Bilokumsky* v. *Tod*, 263 U.S. 149, 153, *Costanzo* v. *Tillinghast*, 287 U.S. 341, 343, and cases cited.

An examination of the record before the immigration authorities shows that there was ample evidence to sustain the finding that petitioner was an alien. Petitioner in effect admitted his alienage and that his naturalization certificate had been cancelled. (R. 21–23, 27, 46, 49, 55. See also petioner's twentieth assignment of error in the court below, R. 160–161.) We believe that the evidence of alienage in this case was more persuasive than in the *Bilokumsky* case, *supra,* where the inference of alienage was drawn from the alien's silence. Petitioner does not now assert that he is a naturalized citizen of the United States. If there were any doubt about petitioner's alienage it is inconceivable that the question would not have been presented by him below. Upon the whole record there seems to be no basis for attacking the finding of alienage.

Petitioner's complaint that the immigration authorities should have proved the cancellation of his naturalization certificate by offering an authenticated copy of the order of cancellation does not affect the validity of the order of deportation. That would have been the simpler way to prove his alienage but his admissions were equally effective.

Petitioner questions the validity of the order of cancellation. There is some evidence in this record that the application for cancellation was made by the petitioner (R. 22–23) and, accordingly,

the provision for notice in the portion of the Naturalization Act upon which petitioner relies, relating to applications for cancellation by the Government, has no application. Furthermore, the proper place to attack the order was in the proceeding in which the cancellation occurred and not collaterally in this proceeding. On this record the courts below would have been amply justified in concluding that the finding of alienage was not without evidence to support it, and not having raised the question below the petitioner is not in a position to question the finding in this Court.

V

PETITIONER HAD A FAIR HEARING

Petitioner attacks the fairness of the immigration hearing upon a number of grounds which we shall discuss *seriatim*. The applicable principles have been settled by the decisions of this Court. Within the rules announced in *Bilokumsky* v. *Tod*, 263 U.S. 149, 157, *supra*, and *Vajtauer* v. *Commissioner of Immigration*, 273 U.S. 103, 106, there seems to us to be no doubt, upon examination of the whole record, that petitioner was accorded a fair hearing.

The grounds of attack upon the fairness of the hearing are:

1. Petitioner urges that the testimony of Immigrant Inspector Phillips, with respect to the statements by the petitioner when he reentered from

Cuba, was incredible. There was undoubtedly a conflict between the testimony of Phillips and the testimony of petitioner's witnesses, but, upon review, the decision of the immigration officers cannot be set aside if there was evidence to support their conclusion, and the mere fact that the testimony was conflicting does not justify a conclusion that the relator was unlawfully held for deportation. That is not the function of a writ of habeas corpus. See *Vajtauer* v. *Commissioner, supra.*

The administrative officers were clearly justified from the evidence in concluding that the petitioner had represented to Inspector Phillips that he was a naturalized citizen. Inspector Phillips' positive testimony that the petitioner had stated to him that he was a naturalized citizen of the United States (R. 90) was corroborated by documentary evidence (R. 27, 85–86, 89–90, 133–135). This documentary evidence showed that petitioner appeared on the list of United States citizens delivered to Inspector Phillips on the occasion of petitioner's arrival by airplane from Cuba (R. 89, 133). It seems obvious that the information on this list must have been furnished by petitioner and the inspector testified that he entered on the list opposite petitioner's name the fact that petitioner had been born in the Argentine, and that this was done in the case of naturalized citizens (R. 90). On the other hand, petitioner's testimony that he had not told the inspector that he was a nat-

uralized citizen, but only that he had obtained his first papers, was corroborated only by the oral testimony of some of petitioner's companions, and was wholly uncorroborated by contemporary documentary evidence. In these circumstances, the administrative officers were certainly justified in accepting the Inspector's corroborated evidence instead of the uncorroborated evidence offered on behalf of petitioner. Petitioner suggests that even though Phillips' testimony was entitled to credit, it was necessary for the Government to prove petitioner's knowledge of the falsity of his claim to be a naturalized citizen, but in view of the importance to the petitioner of his naturalization and the significance of the cancellation of his naturalization certificate the immigration officers were entitled to infer such knowledge on his part.

2. Petitioner complains of the failure to produce at Government expense certain immigration inspectors stationed in Florida and the employee of an aeroplane company which transported petitioner from Cuba to Florida. The immigration officer who presided at the hearing was clearly justified in refusing to produce these witnesses at Government expense (R. 123–124, 127–128). The inspectors involved had no direct connection with petitioner's entry and the employee of the aeroplane company was quite as available to petitioner as to the Government. Petitioner was offered an opportunity to bring the desired witnesses to the

hearing at his own expense, but declined to do so (R. 128). Petitioner also complains of the failure to produce an alien manifest which contained the name of the alien, who declared himself to be such, accompanying petitioner's party from Cuba (R. 102, 114, 116–117), but petitioner's name did not appear upon the alien manifest since he declared himself to be a citizen. As it was merely corroborative of Inspector Phillips' testimony, there was no necessity for prolonging the hearings until it could be sent to Chicago from Florida.

3. Petitioner complains because he was asked about a number of previous arrests upon various criminal charges and as to his associations with certain notorious Chicago gangsters. The Government was not precluded by the charges contained in the warrant of arrest from any inquiry which might have a bearing upon petitioner's right to remain in this country, and it was entitled to include in the warrant of deportation any ground therefor developed at the hearing, provided petitioner was given an adequate opportunity to answer the new charges. *Gonzales* v. *Zurbrick*, 45 F. (2d) 934 (C.C.A. 6th); *Marty* v. *Nagle*, 44 F. (2d) 695, 696 (C.C.A. 9th), petition for certiorari dismissed, 283 U.S. 868; *United States ex rel. Bauder* v. *Uhl*, 211 Fed. 628, 633 (C.C.A. 2d). Furthermore, petitioner is estopped to question the fairness of the hearing on this ground because, at the conclusion of the portion of the hearing at which all of the challenged inquiry occurred, the

petitioner's counsel conceded that the hearing had been entirely fair (R. 48).

4. Petitioner contends that he should have been allowed to explain his plea of guilty in the counterfeiting case. It is settled, however, that the record of conviction of an alien in a criminal case is conclusive in immigration hearings for his reportation. *Ng Sui Wing* v. *United States*, 46 F. (2d) 755 (C.C.A. 7th); *Tillinghast* v. *Edmead*, 31 F. (2d) 81 (C.C.A. 1st); *United States ex rel. Mylius* v. *Uhl*, 210 Fed. 860.

5. Petitioner contends that the hearing was unfair because his witnesses were excluded from the hearing room while Inspector Phillips was allowed to be present when petitioner identified himself. This point seems adequately disposed of in the opinion of the District Court (R. 153–154) where it is pointed out that the record shows no application for the exclusion of witnesses, nor is there anything to show that petitioner's witnesses were excluded, as he contends. Furthermore, there does not appear to be any established practice with reference to the exclusion of witnesses in such cases. (R. 143–144.) Under the circumstances, certainly the matter of exclusion rested in the sound discretion of the presiding officer.

Consideration of the entire record shows that there was no denial of a full and a fair trial and that the hearings were conducted with scrupulous regard to petitioner's rights which were also adequately protected by his counsel.

CONCLUSION

If the case has not abated, we respectfully submit that petitioner may be deported on either of the grounds stated in the warrant of deportation, and that he was accorded a fair hearing by the immigration authorities.

Respectfully submitted.

THOMAS D. THACHER,
Solicitor General.

WHITNEY NORTH SEYMOUR,
Special Assistant to the Attorney General.

W. MARVIN SMITH,
Attorney.

ALBERT E. REITZEL,
Assistant Solicitor,
Department of Labor,
Of Counsel.

MAY, 1933.

APPENDIX A

Pertinent provisions of the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 875, 889–890:

SEC. 1. That the word "alien" wherever used in this Act shall include any person not a native-born or naturalized citizen of the United States; * * * . (U.S.C., Title 8, Sec. 173.)

SEC. 3. That the following classes of aliens shall be excluded from admission into the United States: * * * persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude: * * *. (U.S.C., Title 8, Sec. 136.)

SEC. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; * * * except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment be-

cause of conviction in this country of any crime involving moral turpitude, committed at any time after entry; * * * any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude; at any time within three years after entry, any alien * * * who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: * * * *Provided further*, That the provision of this section respecting the deportation of aliens convicted of a crime involving moral turpitude shall not apply to one who has been pardoned, nor shall such deportation be made or directed if the court, or judge thereof, sentencing such alien for such crime shall, at the time of imposing judgment or passing sentence or within thirty days thereafter, due notice having first been given to representatives of the State, make a recommendation to the Secretary of Labor that such alien shall not be deported in pursuance of this Act; nor shall any alien convicted as aforesaid be deported until after the termination of his imprisonment; * * *. (U.S.C., Title 8, Sec. 155.)

APPENDIX B ON THE QUESTION OF ABATEMENT

We have heretofore filed a suggestion of abatement in this case. While we do not desire to delay the disposition of the case and would willingly consent to waive the question of abatement, we think there is sufficient doubt about the question to make it our duty to bring together the considerations which seem to have a bearing upon the question.

Petitioner was taken into custody in Chicago by Immigrant Inspector Ellefson (R. 14) under a warrant of arrest addressed to the "District Director of Immigration, Chicago, Ill. Or to any Immigrant Inspector in the service of the United States" (R. 13). He was released under a bond in the sum of $10,000 which recited, the immigration file shows, his arrest and contained the following condition:

> AND WHEREAS, pending the final disposal of his case the said alien desires to avail himself of the privilege of being released from custody accorded by section 20 of the Act of Congress approved February 5, 1917 (39 Stat.L. 874), and has applied to the immigration official by whom said warrant has been served for his release upon giving a proper bond or undertaking that he will deliver himself into the custody of the said immigration official or other proper immigration official representing the United States Government for hearing or hearings and for deportation in case he is found to be unlawfully within the United States;

> NOW, THEREFORE, the condition of this obligation is such that if the above-bounded alien shall, in case he is released from custody, deliver himself into the custody of the said immigration official or other proper immigration official representing the United States Government for hearing or hearings in regard to the charge upon which, as above set forth, he has been taken into custody, and if, in case the said alien, upon such hearing or hearings, is found to be unlawfully within the United States, and is for any reason released from custody pending issuance of a warrant of deportation or after said warrant has been issued and pending final deportation, the said alien shall at any time, upon request, deliver himself into the custody of the said immigration official for deportation under the aforesaid warrant delivery either for hearing or hearings for deportation to be made upon request of the proper immigration official, and to be complete only upon acceptance of said alien by said immigration official, then this obligation to be void; otherwise to remain in full force and virtue.

Hearings were held in Chicago before Immigrant Inspector Ellefson (R. 14, 20, 41, 87), and on April 28, 1931, a final warrant of deportation was issued, which was directed to the "District Director of Immigration, Chicago, Illinois, Commissioner of Immigration Ellis Island, N.Y.H., Or to any Officer or Employee of the United States Immigration Service" (R. 138).

Under the immigration rules prescribed by the Commissioner General of Immigration and approved by the Secretary of Labor, the United States is divided into over thirty administrative

districts for convenience in enforcing the immigration and Chinese exclusion laws. In some of these districts Commissioners of Immigration are in charge and in others District Directors (Rule 30, Immigration Rules of January 1, 1930). District Directors of Immigration are appointed pursuant to Section 24 of the Immigration Act of 1917, c. 29, 39 Stat. 874, 893 (U.S.C., Title 8, Sec. 109), which provides "That immigrant inspectors and other immigration officers, clerks, and employees shall hereafter be appointed and their compensation fixed and raised or decreased from time to time by the Secretary of Labor, upon the recommendation of the Commissioner General of Immigration and in accordance with the provisions of the civil-service Act of January sixteen, 1883 * * *." Under Section 23 of that Act (U.S.C., Title 8, Sec. 108), "The duties of Commissioners of Immigration and other immigration officials in charge of districts, ports, or stations, shall be of an administrative character, to be prescribed in detail by regulations prepared under the direction or with the approval of the Secretary of Labor * * *." The regulations prescribed by the Secretary of Labor provide that

> The duties of district directors shall be in all respects similar to the duties of commissioners of immigration, and such district directors shall have the same power and authority as commissioners of immigration. (Rule 29, subdivision B, par. 1, Immigration Rules of 1930.)

and that

> The duties of a commissioner of immigration shall be of an administrative character, and such commissioner shall at all times be

> subject to the immediate control, direction, and supervision of the Commissioner General of Immigration, and shall promptly obey and carry out all orders and directions that may from time to time be issued by said Commissioner General. Commissioners of immigration shall have the control, direction, and supervision of all officers, clerks, and employees within their respective jurisdiction, and may, with the approval of the Commissioner General, prescribe rules and regulations, not inconsistent with law, for the transaction of business and the custody, use, and preservation of records and papers and to govern and control their officers, clerks, and employees. (Section 23, act of February 5, 1917.) (Rule 29, subdivision A, par. 1).

Under Rule 30 of the Immigration Rules, *supra,* Chicago is in District No. 14, and is in charge of a District Director. The extent of that district is stated in the rule to be—

> that part of the State of Indiana lying north of the counties of Vermillion, Fountain, Montgomery, Clinton, Howard, and Miami and west of the counties of Wabash, Kosciusko, and Elkhart; all that part of the State of Wisconsin lying south of the counties of Florence, Forest, Oneida, Lincoln, Taylor, and Vernon and east of the counties of Clark, Jackson, and Monroe; that part of the State of Iowa lying east of the counties of Winneshiek, Fayette, Delaware, Linn, Johnson, Washington, Henry, and Lee; and that part of the State of Illinois lying north of the counties of Hancock, McDonough, Mason, Logan, DeWitt, Piatt, Douglas, and Edgar.

The petition for habeas corpus alleged that petitioner was held in custody under a warrant of de-

portation by S. D. Smith, "Inspector in charge of immigration at Chicago, Illinois" (R. 2), and the writ of habeas corpus was addressed to "S. D. Smith, Immigration Inspector in Chicago" (R. 9). The return to the writ, however, recited that it was made on behalf of "S. D. Smith, District Director of Immigration at Chicago, Illinois", and was signed by Smith as "District Director of Immigration" (R. 10, 12). The order of the District Court of June 16, 1931, dismissing the writ of habeas corpus provided that "the relator, Anthony Volpe, be remanded to the custody of the respondent S. D. Smith, District Director of Immigration for deportation to Italy" (R. 155). An immediate appeal was taken from this order by petitioner to the Circuit Court of Appeals for the Seventh Circuit (R. 156, 163). In the order allowing this appeal, it was provided that the "appeal shall operate as a supersedeas and the defendant be admitted to bail during the pendency of this appeal upon filing a bond in the sum of three thousand ($3,000) dollars with good and sufficient surety within ten days" (R. 163). Examination of a certified copy of this bond shows that it was conditioned as follows:

> Now the condition of said obligation is such, That if the said Anthony Volpe shall appear in person in the United States Circuit Court of Appeals for the Seventh Circuit on the sixth day of October, A. D. 1931, of the October Term, 1931, and from day to day thereafter in said Court until said cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the United States Circuit Court of Appeals for the Seventh Circuit, in said

> cause, and shall surrender himself in execution of the judgment appealed from as said Court may direct, if the judgment against him shall be affirmed or the appeal is dismissed, and if he shall appear for trial in the District Court of the United States, for the Northern District of Illinois, Eastern Division, on such day or days as may be appointed for retrial by said District Court and abide by and obey all orders of said Court, provided the judgment against him shall be reversed by the United States Circuit Court of Appeals for the Seventh Circuit, then the above obligation to be void; otherwise to remain in full force, virtue, and effect.

The order of the District Court dismissing the writ of habeas corpus was affirmed by the Circuit Court of Appeals on January 11, 1933 (R. 196), but the case was not finally disposed of until February 1, 1933, when a petition for rehearing filed by the petitioner was denied (R. 197).

On January 15, 1932, while the case was pending on appeal in the Circuit Court of Appeals respondent Smith, according to information received from the Department of Labor, was appointed District Director of Immigration at Salt Lake City, Utah. He entered upon his duties there on February 1, 1932, but we have been unable to ascertain the date he took the oath of office. The Utah District is District No. 27 and its territory "includes the State of Utah; that part of the State of Wyoming lying west of meridian 109 and south of parallel 44; that part of the State of Idaho lying south of parallel 44; and that part of the State of Nevada lying north of parallel 37 and east of meridian 117" (Rule 30, Immigration Rules of 1930).

Smith's successor as District Director of Immigration at Chicago was C. Alfred Palmer, who was appointed January 14, 1932, and entered upon the duties of his office February 1, 1932, and took the oath of office March 3, 1932. No substitution has been made in the instant case of Palmer for Smith.

Section 11 (a) of the Act of February 13, 1925, c. 229, 43 Stat. 936, 941 (U.S.C., Title 28, Sec. 780) provides that

> Where, during the pendency of an action, suit, or other proceeding brought by or against an officer of the United States, or of the District of Columbia, or the Canal Zone, or of a Territory or an insular possession of the United States, or of a county, city, or other governmental agency of such Territory or insular possession and relating to the present or future discharge of his official duties, *such officer* dies, resigns, or *otherwise ceases to hold such office*, it shall be competent for the court wherein the action, suit, or proceeding is pending, whether the court be one of first instance or an appellate tribunal, to permit the cause to be continued and maintained by or against the successor in office of such officer, if within six months after his death or *separation from the office* it be satisfactorily shown to the court that there is a substantial need for so continuing and maintaining the cause and obtaining an adjudication of the questions involved. (Italics ours.)

The present suit was obviously brought to prevent the present or future discharge by the respondent Smith of his duties with reference to the execution of the warrant of deportation. The warrant is not self-executing, and the immigration offi-

cer in charge of the particular district where a deportation proceeding has taken place has certain duties which are imposed upon him in connection with deportation by the regulations of the Secretary of Labor. To enumerate some of those duties in the ordinary case, he must secure a passport for the deportee, if a passport can be obtained locally; this passport must be forwarded to the port of departure (Rule 19, subdivision H, pars. 1, 2); and arrangements must be made for the transportation of the deportee and his personal effects (Rule 19, subdivisions P and Q, Immigration Regulations, 1930). Special provisions are made in the regulations for the deportation of insane or diseased aliens (Rule 20, Immigration Rules, 1930), and if the alien is to be deported to Canada or Mexico, certain additional duties are imposed upon the immigration officer in charge of the district wherein the case originated (Rule 19, subdivisions I and J, Immigration Rules of 1930). Obviously, it would tend to cause confusion in the administration of the immigration laws if the immigration officer in charge of one district could go into another district and perform the duties which under the regulations properly fall to the lot of another District Director. The regulations clearly do not contemplate that a District Director shall have a roving commission, although it may be conceded that there is no prohibition therein which would preclude Smith from going to his old district for the purpose of completing his duties in connection with this case.

In response to the suggestion of abatement petitioner contends that Smith has not "ceased" to hold the office of District Director of Immigra-

tion, even though he has been placed in charge of another district. This seems to ignore the fact that the instant suit was brought against Smith in connection with the discharge of duties imposed upon him as District Director of Immigration in charge of the Chicago District. Apparently, he has ceased to hold that office quite as much as if he had been appointed to such a post as stenographer in the Salt Lake immigration office. It is true that he is still a District Director of Immigration, but the position which he now holds is so distinctly a different position as to require the taking of a new oath of office.

On its face, the warrant of deportation indicates that it may be executed by anyone in the immigration service, but there are practical difficulties attending execution which suggest that the broad form of the warrant does not necessarily control. As we have indicated, under the regulations the initial steps incident to the deportation of an alien, in the absence of exceptional circumstances, are taken by the immigration officer in charge of the district wherein the case originated, i.e., the district where the alien was arrested and the deportation proceedings were held. As will be seen from the memorandum dated April 12, 1933, prepared for the Solicitor of the Department of Labor at the request of the Solicitor General by the Chief of the Deportation Division of the Bureau of Immigration, which is printed as Appendix C, the warrant of deportation is addressed not only to the District Director of Immigration in charge of the district having jurisdiction of the deportation proceedings but to "any officer or employee of the United States Immigration Service" merely as a protection to

any such officer who may have charge of the custody of the deportee while he is being transported from the district where the deportation proceedings were held to the port of departure. The view that Smith may still execute the warrant of deportation even though he is not now District Director of Immigration in Chicago, because of the apparently broad grant of authority contained in the warrant, seems to leave out of consideration the purpose of that grant as indicated by the regulations and practice with respect to the execution of deportation warrants. On the other hand, it seems by no means certain that these practical difficulties could not be overcome in the novel circumstances of this case.

The view that there has been no abatement is fully presented in a reply brief filed by petitioner in answer to the Government's suggestion of abatement and we submit this phase of the case for the consideration of the Court. While we have felt it to be our duty to supply the Court with all the information on the subject which is available, it would be desirable to have the case disposed of on the merits and we should be glad to have the Court conclude that there has been no abatement.

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APPENDIX C

Memorandum Prepared by the Chief of the Deportation Division of the Bureau of Immigration, Department of Labor, April 12, 1933

In re execution of warrants of deportation under the immigration laws

It is to be pointed out first of all that by regulations issued under the authority of Section 23 of the Immigration Act of 1917 the Commissioner General of Immigration, with the approval of the Secretary of Labor, has divided the country into a number of districts for immigration purposes, Rule 28 of Rules of March 1, 1927, and Rule 30 of Rules of January 1, 1930. These rules also designate the title of the officer in each district who shall have jurisdiction and charge of the officers and employees in such district enforcing the immigration law; for instance, a Commissioner of Immigration, for the District including New York City, and a District Director of Immigration, for the District including Chicago, Illinois.

Every warrant issued under Section 19 of the Immigration Act of February 5, 1917, by, or under authority from, the Secretary of Labor, directing the deportation of an alien, is addressed to immigration officers and employees of the Immigration Service generally, and to two of them by title, one being the officer in charge of the district where the

alien is being detained or his bail bond contemplates delivery, which in either case is usually the district in which the deportation proceeding originated, and the other officer being the officer in charge of the district from which the alien is to be deported. For example, in the case of an alien where the proceeding looking to deportation has been instituted in the district including Chicago, and deportation is to be from the port of New York, the warrant directing deportation is addressed to—

> District Director of Immigration, Chicago, Illinois.
> Commissioner of Immigration, Ellis Island, N.Y.H. Or to any Officer or Employee of the United States Immigration Service.

The original warrant is sent to the official first named in the address, in that case to the District Director of Immigration at Chicago, and a copy is sent to the Commissioner of Immigration at New York. If the alien is at large under bond, the District Director of Immigration at Chicago, acting under authority of the warrant calls upon the bondsman for the delivery of the alien to an officer or employee of the Immigration Service at a designated time and place. If the alien pending the proceeding looking to deportation has not furnished bond, he has remained in detention, usually a local jail. The District Director of Immigration at Chicago then directs an immigrant inspector or other employee of the Immigration Service to remove the alien from the place of detention, or accept him from the officer or employee who received him from the bondsman, as the case may be, and deliver him

to the officer or employee who is to transfer the alien to the port of New York. The Commissioner of Immigration there has authority to receive the alien by virtue of the fact that the warrant is addressed to that officer. An immigrant inspector or employee of the Immigration Service designated by the Commissioner at New York delivers the alien in due course into the custody of the master of the vessel with whom arrangements have been made for the alien to be transported out of the country. The practice is that each officer and employee taking and holding custody of the alien in the above-stated steps is at such time in possession of the original warrant of deportation, as it is passed from one officer or employee to the next one in this series of steps, and each such officer or employee is within the address of the warrant. He derives his authority from that fact, the instructions from superior officers not being delegations of authority but only matters of administrative control. The officer or employee who delivers the alien to the master of the vessel for deportation verifies the departure of the alien on the vessel, and such officer over his signature endorses on the original warrant the fact of deportation, the date thereof, and the name of the vessel on which the alien was deported. In due course the original warrant is returned to the Bureau of Immigration and attached to the file relating to the alien.

JOHN CROWN,
Chief, Deportation Division.

Approved:

HARRY E. HULL,
Commissioner General of Immigration.

U. S. GOVERNMENT PRINTING OFFICE: 1933

SUPREME COURT OF THE UNITED STATES.

No. 724.—October Term, 1932.

The United States of America, *ex rel.* Anthony Volpe, Petitioner, *vs.* S. D. Smith, District Director of Immigration.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[May 22, 1933.]

Mr. Justice McReynolds delivered the opinion of the Court.

In 1906, when sixteen years old, petitioner, Volpe, entered the United States from Italy as an alien. He has resided here continuously since that time, but has remained an alien.

In 1925 he pleaded guilty and was imprisoned under a charge of counterfeiting obligations of the United States—plainly a crime involving moral turpitude.

During June, 1928, without a passport, he made a brief visit to Cuba. Returning, he landed from an airplane at Key West, Florida, and secured admission by Immigrant Inspector Phillips.

December 15, 1930, Volpe was taken into custody under a warrant issued by the Secretary of Labor which charged him with being unlawfully in this country because "he has been convicted of, or admits the commission of a felony, or other crime or misdemeanor, involving moral turpitude, to-wit: possessing and passing counterfeit U. S. War Savings Stamps, prior to his entry into the United States."

Following a hearing, a warrant of deportation issued and he was taken into custody. Claiming unlawful detention, he instituted habeas corpus proceedings in the District Court of the United States at Chicago. That court dismissed the petition and remanded him to the custody of S. D. Smith, District Director of Immigration at Chicago for deportation. The Circuit Court of Appeals affirmed the judgment and the matter is here by certiorari.

The only substantial point which we need consider is this:—Was the petitioner subject to deportation under the provisions of

the Immigration Act of February 5, 1917, c. 29, 39 Stat. 874, 875, 889, 890, (U. S. C., Title 8, Secs. 136, 155, 173) because he reentered the United States from a foreign country after conviction during permitted residence in the United States of a crime committed therein which involved moral turpitude? Relevant provisions of the Act of 1917 are in the margin.*

Upon this question federal courts have reached diverse views. The cases are cited in the opinion announced below in the present cause.

We accept the view that the word "entry" in the provision of Sec. 19 which directs that "any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude: . . . shall, upon the warrant of the Secretary of Labor, be taken into custody and deported" includes any coming of an alien from a foreign country into the United States whether such coming be the first or any subsequent one. And this requires affirmance of the challenged judgment.

The power of Congress to prescribe the terms and conditions upon which aliens may enter or remain in the United States is no

*Sec. 1. That the word "alien" wherever used in this Act shall include any person not a native-born or naturalized citizen of the United States; . . .

Sec. 3. That the following classes of aliens shall be excluded from admission into the United States: . . . persons who have been convicted of or admit having committed a felony or other crime or misdemeanor involving moral turpitude; . . .

Sec. 19. That at any time within five years after entry, any alien who at the time of entry was a member of one or more of the classes excluded by law; any alien who shall have entered or who shall be found in the United States in violation of this Act, or in violation of any other law of the United States; . . . except as hereinafter provided, any alien who is hereafter sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude, committed within five years after the entry of the alien to the United States, or who is hereafter sentenced more than once to such a term of imprisonment because of conviction in this country of any crime involving moral turpitude, committed at any time after entry; . . . any alien who was convicted, or who admits the commission, prior to entry, of a felony or other crime or misdemeanor involving moral turpitude: at any time within three years after entry, any alien . . . who enters without inspection, shall, upon the warrant of the Secretary of Labor, be taken into custody and deported: . . .

longer open to serious question. *Turner* v. *Williams*, 194 U. S. 279; *Low Wah Suey* v. *Backus*, 225 U. S. 460, 468; *Bugajewitz* v. *Adams*, 228 U. S. 585, 591.

That the second coming of an alien from a foreign country into the United States is an entry within the usual acceptation of that word is clear enough from *Lewis* v. *Frick*, 233 U. S. 191; *Claussen* v. *Day*, 279 U. S. 398.

An examination of the Immigration Act of 1917, we think, reveals nothing sufficient to indicate that Congress did not intend the word "entry" in Sec. 19 should have its ordinary meaning. Aliens who have committed crimes while permitted to remain here may be decidedly more objectionable than persons who have transgressed laws of another country.

It may be true that if Volpe had remained within the United States, he could not have been expelled because of his conviction of crime in 1925, more than five years after his original entry; but it does not follow that after he voluntarily departed he had the right of re-entry. In sufficiently plain language Congress has declared to the contrary.

With hesitation, the Solicitor General suggested here that possibly the cause had abated, since S. D. Smith is no longer District Director of Immigration at Chicago, where he formerly held the petitioner in custody. The record indicates that Smith has continued to be an officer in the Department of Labor, although not presently stationed at Chicago. So far as we are advised, under existing regulations, he may carry into effect the order of deportation. Moreover, the cause was permitted to proceed without question, as instituted, long after Smith is said to have left Chicago; and the petitioner insists that no cause has been shown for abatement. The point, we think, lacks merit.

The judgment is

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.